Internationalist Vision for a Postwar World:

H. V. Evatt, Politics & the Law

Emma Ede

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Herbert Vere Evatt, Minister for External Affairs in the postwar period (1941 – 1949), has been labelled by his contemporaries, biographers and historians as an internationalist. He is most often associated with playing a pivotal role in the formation of the UN, with advocating an independent Australian foreign policy and with increasing Australia’s involvement in the Asia-Pacific region. Evatt’s commitment to an internationalist framework was however, mitigated by his adhesion to a set of political and legal ideologies that effectively undermined the vision he promulgated for the postwar world.
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**Abbreviations**

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<td>AA</td>
<td>National Australian Archives, Canberra</td>
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<td>DAFP</td>
<td>Documents on Australian Foreign Policy</td>
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<td>DFAT</td>
<td>Department of Foreign Affairs and Trade, [Online]</td>
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<td>EC</td>
<td>Evatt Collection, Flinders University Library, Adelaide</td>
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<td>ICJ</td>
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**Introduction**
Political oratory in the postwar period was infused with the language of internationalism. In 1943, former presidential hopeful Wendell Willkie published a travelogue entitled *One World* in which he implored world leaders to cooperate after the war, criticised colonialism and pleaded for racial freedom not only in foreign empires but within the United States. It was a message that inspired Australia’s Attorney General and Minister for External Affairs, Herbert Vere Evatt (1894 – 1965). Evatt championed the book’s message; that global interdependence rather than isolationism was a necessary precondition for world peace. After the Second World War the prospect of an organisation that would unite the world’s citizens reinvigorated a sense of global community. Groups that might once have seemed completely disconnected were finding congruence in their demands for change in the postwar world. Race was unavoidably on the agenda. The Chinese Government, African Americans and emerging nationalist groups in colonised countries were all vocal about their demands for global racial equality. During the war the American Government had been placing pressure on the old European empires to amend their archaic imperial practices. When representatives of Allied nations came together at San Francisco in 1945 to draft a Charter for the new United Nations (UN), their intention was to create an international security organisation that could both alleviate the suffering of many of the world’s citizens and avoid ‘the tragedy of a third world war’.

As Attorney General and Minister for External Affairs under the Curtin and Chifley Labor governments (1941 – 1949), Evatt has long been associated with the internationalist impetus of

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the postwar period, with pursuing an agenda founded upon universal human rights and democratic principles. In fact, Evatt’s pursuit of internationalist objectives arose predominantly out of his desire to secure for Australia a more central role in international affairs after the war. He believed that small and middle powers would shoulder more international responsibility under a democratic world order that promoted multilateral and institutional diplomacy. In order to guarantee Australia an autonomous presence on the world stage, Evatt sought to disassociate Australia’s foreign policy from Whitehall. In his personal appearances at world forums and in the articles and speeches he presented to the world press, Evatt promoted an ideal of the British Commonwealth as a family of equals rather than a collection of weak dependencies reliant upon the motherland. Finally, Evatt sought to elevate Australia’s status in the Pacific region by encouraging the view that Australia was a security power. Evatt saw no discontinuity between these various objectives. They were all harmoniously connected to an internationalist vision of global cooperation rather than isolationism. He believed that a focus on Pacific security was not inconsistent with, but rather was ‘patterned within, the supreme objective of world security’. Similarly he suggested that internationalism and nationalism were ‘closely interwoven’. Evatt argued that Australian security, prosperity and democracy were ‘dependent upon the attainment of security, prosperity and freedom in other lands.’

The term internationalist, as it applies to Evatt, has been provided with various ill-assorted working definitions by the biographers and historians who have documented Evatt’s foreign

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policy since the 1970s. The first point on which historians have disagreed is the extent to which Evatt’s commitment to internationalist ideals operated in accordance with his pursuit of Australian interests. One particular policy that Evatt defended as being in the nation’s best interest was the White Australia Policy. The first comprehensive biography of Evatt was published in 1970 by family friend and Evatt loyalist Kylie Tennant.11 Tennant saw no incongruity between Evatt’s pursuit of internationalist ideals and White Australia. In her biography, Evatt is seen wearing himself out trying to ‘adjust the machinery for peace on earth’, ‘cajoling, persuading, flinging himself on any lever that would move nations from their ancient paths of treachery and violence’.12 Tennant is essentially an apologist for White Australia, defending it in terms similar to Evatt as an ‘economic policy’, reminding her readers that Chinese immigrants in the Northern Territory had brought leprosy, polluted the water and ‘refused to abide by the customs of the white workers’.13 Tennant’s work is the least critical of all the biographies produced by Evatt loyalists.

Department secretary and Washington ambassador Alan Renouf, also an Evatt supporter, did recognise the extent to which White Australia was irreconcilable with Evatt’s promotion of human rights. Renouf argued that this ‘glaring inconsistency’ between Evatt’s liberalism, his ‘addiction to principle in External Affairs’ and his nationalism never appeared to occur to Evatt.14 Renouf made no attempt however to understand either the origins of these incompatible ideologies or the consequences that they had on the internationalist movement. Both Renouf and Evatt’s private secretary, Allan Dalziel, reconciled Evatt’s nationalist and internationalist agendas by focussing on his overriding commitment to the principle of justice that they argued permeated both allegiances. Dalziel argued that domestic politics never stunted nor impaired Evatt’s vision for justice.

12 Tennant, Evatt: Politics and Justice, p. 192.
13 Tennant, Evatt: Politics and Justice, p. 58.
for an end to colonialism, for the forging of relationships with African and Asian nations, and for unswerving support of the principles embodied in the UN Charter.\textsuperscript{15} Renouf recognised that Evatt’s defence of White Australia and his desire to consolidate Australian control over Papua and New Guinea were both intended to secure Australian interests. Nevertheless, the extent of the inconsistency between these policies and the ideals of internationalism is mitigated by Renouf’s focus on the commitment to justice that permeated Evatt’s political philosophy. He wrote that Evatt’s ‘driving force was a passion for political, economic and social justice’.\textsuperscript{16} His commitment to Australian control over the trust territory of Papua and New Guinea was justified by Renouf as being a commitment to the justice of guardianship.\textsuperscript{17}

The practice of recognising the discrepancy between Evatt’s nationalist and internationalist ideals has been continued by less devoted and more analytical Evatt biographers. W. J. Hudson described Evatt as a ‘meddling internationalist’ who pursued ‘positive internationalist goals while at the same time trying to protect Australian national interests.’\textsuperscript{18} Paul Hasluck, an Australian diplomat who served the Department of External Affairs from 1941 – 1947\textsuperscript{19} credited Evatt with a ‘genuine Australianism’ but suggested that his desire to have an Australian voice heard on the world stage was often simply an end in itself.\textsuperscript{20} He criticised the disposition within Australian foreign policy to ‘throw stones at street lights just because they are bright’.\textsuperscript{21} Hasluck also argued in his memoir \textit{Diplomatic Witness}, that Evatt had limited expertise in the areas of international affairs and international law, and that his interest in each field was predominantly a result of

\textsuperscript{16} Renouf, \textit{Let Justice be Done}, p. 249.
\textsuperscript{17} Renouf, \textit{Let Justice be Done}, p. 250
\textsuperscript{18} W. J. Hudson, \textit{Australia and the New World Order: Evatt at San Francisco1945} (Canberra: Australian National University, 1993) p. 7.
\textsuperscript{20} Hasluck, \textit{Diplomatic Witness}, p. 28.
political opportunism during and after the war. Another of Evatt’s contemporaries, senior Australian diplomat Malcolm Booker, believed Evatt’s foreign policy to have been marked by ‘cynicism and self-assertion’. Evatt is often positioned at the beginning of a narrative that is neatly encapsulated by the catchphrase ‘from Evatt to Evans’. This narrative suggests that Australian foreign policy, as distinct from a colonial reliance upon British diplomacy, developed organically from the internationalist focus of Evatt’s political outlook, to the ‘good global citizen’ agenda of former foreign minister Gareth Evans. It is a narrative that Evans and the Labor Party have themselves encouraged. Evatt was actively involved in both the formation of the UN and in its operation. He was president of the Atomic Energy Commission in 1946, chaired the Committee on Palestine in 1947 and became the General Assembly’s Third President in 1948. The degree to which he was committed to the organisation is for many the measure of his internationalist outlook. Historian Dean Ashenden has argued that Evatt was ‘seized’ by the compatibility between UN functions and Australian needs. Ashenden described the UN as the focus of Evatt’s foreign policy

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and the ‘church of his religion’. Similarly, Buckley, Dale and Reynolds depicted Evatt as both an ‘unceasing defender’ of the UN and as ‘one of its architects’.

Conversely, Evatt’s detractors have argued that Evatt was interested in the UN only as a vehicle through which to promote his political career. His political contemporaries in opposition condemned his commitment to the UN as a contradiction of his patriotism. Percy Spender argued that as an internationalist, Evatt failed to be an Australian. Billy Hughes criticised Evatt’s loyalty to a ‘hopelessly futile, garrulous institution, incapable of preserving peace’. In the early 1990s, the publication of two Evatt biographies, the Buckley biography and Peter Crockett’s Evatt: A Life, rekindled postwar ideological debates over Evatt’s internationalism and its supposed origins in leftist thinking. In a review of the collaborative biography Doc Evatt, which had been commissioned by the left-leaning Evatt Foundation, conservative journalist Peter Ryan criticised what he perceived as the authors’ preference for a communist methodology. He suggested that far from being an architect of the UN, Evatt was only ‘one of the minor plumbing contractors’, who brandished a wrench and banged loudly on the pipes. Ryan argued that ‘as the foreign minister of a remote country of only 7 million people, Evatt had no hope of influencing the ‘untramelled will of the great powers’. Similarly, journalist and director of the Sydney Institute, Gerard Henderson accused Buckley of ‘being fossilised in the heady ideological days of

the 1950s’.\(^3^3\) In his review of Crockett’s biography, Ryan likened Evatt to Stalin and argued that Evatt had twisted UN proceedings to obtain personal publicity.\(^3^4\) Accounts of Evatt’s adhesion to an internationalist framework have clearly been influenced by Australian party politics and by the tendency of some to associate Evatt with postwar communism.\(^3^5\) Yet, even Paul Hasluck who, though not an Evatt loyalist, did in his memoirs praise Evatt’s achievements, has suggested that Evatt was more concerned with the success of pushing through Australia’s amendments to the UN Charter than he was with the ‘emerging international situation’ of the postwar period.\(^3^6\)

Despite the tendency of Evatt’s biographers to focus on his pursuit of national interests, there are other factors that complicate his reputation as an internationalist. In his body of work on Evatt’s role in the partitioning of Palestine, Daniel Mandel argued that Evatt was guided by his ‘ideal of furthering the cause of Zionism which he had adjudged to be right’, and that he did so at the risk of his ‘fondest ambition, the presidency of the United Nations General Assembly’.\(^3^7\) Likewise, Frank Bongiorno has suggested that Evatt’s effectiveness on the international stage was reduced by his commitment to outdated models of Commonwealth citizenship.\(^3^8\) Missing from this literature on Evatt as an internationalist is a comprehensive exploration of the complexity of the

term as it applied to Evatt. His internationalism was not a fixed principle to which he consistently adhered. Rather, it developed out of competing legal and political interests that forced him to adopt a range of contingent and often incompatible subject positions.

This thesis will examine Evatt’s commitment to an internationalist framework in light of both a contra legalism and his adhesion to a set of political ideologies that effectively undermined the vision he promulgated for the postwar world. The first chapter will explore his proclivity for a nationalist approach to international relations. In order to understand the seeming contradiction between Evatt’s internationalism and his conservative aspiration to defend and prioritise Australia’s interests, the chapter will map out the legal framework that compellingly pervaded Evatt’s approach to world affairs. Evatt was first and foremost a constitutional lawyer, committed to the legal principles that bound the British Commonwealth of Nations. He was however, frustrated with British politicians and had ambitions to disengage Australian diplomacy from reliance upon its British counterpart. In spite of this, Evatt remained dedicated to the legal relationships that bound the Commonwealth and in particular, to the authority of the Crown as the source of governmental power in the dominions. This legal framework ultimately affected the degree to which Evatt could advocate the internationalist discourse of the postwar world, in particular, in his attempt to force Indian leaders to retain a legal commitment to the Crown in the Constitution of their new republic.

The second chapter will explore the relationship between Evatt’s reputation as an internationalist and his defence of the White Australia policy. Through an examination of postwar idealism about racial equality, human rights and the end of empires, chapter two will make evident the degree to which Evatt’s views on race and nation were incompatible with the internationalist ideology to which he declared himself committed. Rather than attribute Evatt’s defence of White Australia to either an innate racism or to political expediency, the second chapter will flesh out the ways in
which Evatt’s views on race were affected by his participation in the labour movement and his attachment to the legal framework provided by constitutional law.

The third and final chapter of this thesis will challenge the image of Evatt as a champion for the rights of dependent peoples. Instead of advocating a liberal agenda in debates over the new UN trusteeship system at San Francisco, Evatt’s proposals went little further than Britain’s and did not fulfil the rhetoric of internationalist idealism that had been popularised during the war. In comparison to the proposals of smaller states, particularly from Latin America, the Australian view of trusteeship was little more than a reformed colonialism. Evatt was preoccupied by his desire to retain control over the trust territories of Papua and New Guinea and to elevate Australia’s status as a Pacific power. By employing the gradualist rhetoric of welfare, liberty and self-governance, Australia was able to consolidate its hold over Papua and New Guinea in the postwar period.
From his early judicial attempts to expand the constitutional power of the Commonwealth Government over international issues, to his combative style of diplomacy while Minister for External Affairs, Evatt consistently demonstrated a clear desire to encourage an independent Australian foreign policy. He wanted Australia to possess equal, rather than subject, status to Britain. Evatt’s desire for Australian autonomy in foreign relations was compounded by what he considered to be, the indifference shown by the major powers to Australian interests during the war. Like many Australian politicians who had gone before him, Evatt was engaged in an unrelenting effort to have Australia’s voice heard and considered by the major powers. The general Australian populace experienced a rapid disillusion after the Fall of Singapore in 1942, feeling that the security of Australia was no longer a priority for the British Government. This disillusion was magnified for Evatt, whose job required him to lobby American and British leaders for military aid in the Pacific, when both states had already decided between them to prioritise the European theatre and implement a ‘Beat Hitler First’ strategy. Evatt was

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exasperated by the absence of consultation and also by public statements made by American and British officials that reiterated the importance of the Atlantic war at the expense of the Pacific. Australia was denied access to vital executive councils and when admitted was presented with issues that they were not expected to consider, giving an impression of inclusion that was entirely artificial. Evatt often believed that the ‘British were misleading Australia with incomplete information’. He was not shy when it came to expressing his displeasure with British unresponsiveness. He did so explicitly in private cables and somewhat more tactfully in public speeches.

This tenacity with which Evatt pursued his ambition for a self-directed Australian foreign policy and a distinct international persona has been the focus for many of his biographers and for political historians. Fascination with both the doggedness of Evatt’s character and the

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46 Such as the comment made by the Secretary of the US Navy who stated that the battle of the Atlantic was the most important struggle of the war and warned Americans not to expect ‘favourable, dramatic developments of triumphant American full-scale naval engagements in the Pacific’; see Cablegram, Evatt to Mr R. G. Casey, Minister to the United States, Document 291, Canberra, 22 January 1942, AA:A98, DAFP Volume 5, 1941, July - 1942, June DFAT.

47 Crockett, Evatt: A Life pp. 186, 196, 198; High Commissioner in London, and former Prime Minister Stanley Bruce briefed Evatt on his similar concerns. He was frustrated by Britain’s practice of making decisions prior to consulting the dominions, making the issues at stake essentially non-negotiable; Note by Bruce of Conversation with Evatt, Document 237, 6 July 1943, AA:M100, JULY 1943 DAFP, Volume 6, 1942, July - 1943, December DFAT.

48 Paul Hasluck, Diplomatic Witness, pp. 42 – 43.


51 Biographers include Renouf, Let Justice be Done, p. 291, Hasluck, Diplomatic Witness, p. 28; Political historians include Carl Ungerer, ‘The Middle Power Concept in Australian Foreign Policy’, Australian Journal of Politics and History Volume 53, Number 4 (2007), pp. 540 – 543; David Lee, Australia and the World in the Twentieth Century (Beaconsfield: Circa, 2006), p. 73; Coral Bell, Dependent Ally: A Study in Australian Foreign Policy 3rd edition, (St. Leonards: Allen & Unwin in association with Department of International Relations, RSPACS, ANU, 1993), p. 31; One notable exception is Malcolm Booker who noted that despite the rapid increase in Australian diplomatic missions being
relationships he had with British statesmen should not be surprising. The many examples of Evatt irritating British officials provide a rich resource for engrossing historical narratives. At the San Francisco Conference he was labelled by British delegate, Charles Kingsley Webster, as egotistical, ambitious and malignant. The British were infuriated by his attempt to limit the veto (going so far as to ensure that his speech on the issue was not circulated among conference members). Noted historian on Commonwealth relations, Bruce Miller, considered Evatt to be highly nationalistic. He wrote that Evatt’s attitude towards Britain and the Commonwealth was ‘very much that of picking the eyes out of the opportunities offered, but accepting no responsibility for anything that might go wrong.’ On the world stage Evatt did not want foreign nations to think Australian policy would blindly comply with British directions. Being keen to advocate Australia’s interests at the expense of Britain’s veto power and to advance Australia’s position in the Pacific, he wanted to avoid going to San Francisco with any agreed joint Commonwealth strategy. Foreign Secretary Anthony Eden wrote to Churchill from the conference, ‘Evatt and Fraser [New Zealand Prime Minister] are making clear to the Americans and all concerned that we do not control their voices’. These views reflected a broader pattern of disagreement between the post-war Labor governments of Attlee and Chifley. The failure of British and Australian politicians to agree on matters of policy and approach in international affairs provides a framework upon which historians have approached Evatt’s attitude to Britain.

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established overseas, the status of those missions remained ambiguous due to a continuing hesitation, even by Evatt, about asserting a diplomatic role independent of the Empire; Malcolm Booker, ‘The First Fifty Years of Australian Diplomacy’ [Based on the Sixth Biennial Nan Phillips Memorial Lecture, 19 October 1995: Canberra and District Historical Society], Canberra Historical Journal Issue 37, (March 1996), p. 8.


54 Cablegram, Forde and Evatt to Curtin, Document 73, London, 17 April 1945, AA: A1066, H45/772, DAFP, Volume 5, 1945, DFAT.


Historical accounts of Evatt’s nationalism have treated it as an ideology that came naturally to him.\(^\text{57}\) In doing so, historians have left themselves free to explore the political consequences of that ideology without explaining either its origins or the way in which it was problematised by competing concerns. Some historians have recognised the influence that his legal background had on his foreign policy. Dean Ashenden, in his examination of Evatt’s role with the UN in Greece, argued that Evatt was devoted to the law; ‘for him it was not simply a profession or a social institution, but a way of seeing, a construction of reality’.\(^\text{58}\) Particular attention has been paid to his empirical legalism that saw him attempt to resolve complex political questions through a strict application of legal rules and procedures.\(^\text{59}\) He had faith in the ultimate ability of institutions to deliver rational outcomes in irrational, highly charged, political situations. Evatt had admired the League of Nations as an institution. He did not believe that the League had failed in its aspirations, its structure or its covenant; rather, he believed that its member states had failed it.\(^\text{60}\)

In 1946, Evatt offered to act as Counsel for Britain in a dispute before the Security Council over Albanian shore batteries and mines destroying British warships in the North Corfu Straight.\(^\text{61}\) He wanted all evidence to be referred to a sub-committee and was concerned that impartiality should be seen to be exercised at all stages in order to safeguard the prestige of the new organisation.\(^\text{62}\) Christopher Waters mounted a similar argument in regards to Evatt’s involvement in the Iranian Crisis of 1946. He suggested that Evatt was anxious for the Security Council to operate in compliance with the Charter of the UN and to ensure that its rulings were judicially independent and not influenced by the interests of member states. It was through strict adherence to legal

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procedures that he considered this would best be achieved. Despite this recognition of Evatt’s commitment to the technicalities of the law, there has been no comprehensive exploration of the substance and the parameters of the legalism that influenced his thinking on international relations. Scant attention has been paid to the underlying legal framework that influenced Evatt’s understanding of British Commonwealth relations. This chapter will explore Evatt’s profound belief in the legal ties that bound Britain to her dominions and the way in which this shaped Evatt’s internationalist outlook.

**Development of a Legal Framework**

Evatt was born in East Maitland, New South Wales in 1894. The fifth of eight sons, he was raised solely by his Irish-Anglican mother, a publican, from the age of seven. He attended Fort Street High School and then became a resident of St Andrews College at the University of Sydney on a full scholarship. At University, Evatt completed bachelor degrees in Arts and Law and a Master of Arts all with first class honours. He was later awarded honorary doctorates in Laws and Letters. Evatt was exceptionally ambitious. At the tender age of twenty-four he was admitted to the Bar. He was involved in New South Wales state politics, primarily as a back-bencher in Premier Lang’s Labor government from 1925 to 1930. He was appointed as King’s Counsel in 1929 and at age thirty-six became the youngest justice of the High Court in Australia’s history. In 1940, Evatt resigned from the bench to enter federal politics. He served as Attorney General and Minister for External Affairs under the Curtin and Chifley Labor governments (1941 – 1949).  

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In his university years and his early years at the Bar, Evatt became a devoted and successful constitutional lawyer. It was at university; under the tutelage of academics such as Mungo MacCallum, Francis Anderson and George Arnold Wood that Evatt developed an interest in British liberalism and its transferral to Australian soil.65 These academics, well-known for their views on British-Australian relations, fuelled Evatt’s interest in the legal, ethical, cultural and historical ties that bound Britain to her Empire and to the Commonwealth.

**Loyalty to Australia and to the Crown**

In the inter-war years public debate was concerned by the extent to which Australia should obediently submit to the requests of Britain. In particular, Australia’s involvement in the Boer War (1899 – 1902) and later in the First World War (1914 – 1918) became the litmus test for categorising individuals as either republicans or loyalists. Wood had been outspokenly against British and Australian intervention in the Boer War. He objected to the unquestioning obedience with which Australia supported the Empire when its actions were clearly immoral. MacCallum, in contrast, argued that since the war had begun Australians needed to be undivided.66 Although Evatt was only a child during the Boer War, his interest in the ethics and politics of the debate was revealed many years later in his choice of biographical subject. In 1940, Evatt wrote a biography of Labor Parliamentarian, William Holman, who had been a vocal and controversial opponent of the Boer War, going as far as arguing that he hoped England would be defeated for they were engaged in the ‘most iniquitous, most immoral war ever waged by any race.’67 Loyalty to Britain was a difficult subject complicated further by the First World War which even Wood supported, proving that ‘loyalist’ and ‘republican’ were not easily defined subject positions.68 It

65 Crockett, *Evatt: A Life*, p. 49.
67 William Holman, New South Wales Parliamentary Debates (NSW PD), 18 October 1899, p. 1466.
was certainly complex for Evatt who was first rejected for service and then lost two brothers and a close friend in the war.\textsuperscript{69} 

Warren Kimball has argued that debates concerning Evatt’s role on the international scene:

> are but proxy for a bigger battle; the broader, often presentist arguments among Australians over national-self consciousness versus colonial mentality, over dependency versus an independent foreign policy, over nationalism versus the imposed internationalism of an imperial structure.\textsuperscript{70}

Evatt, like many of his generation, had a complex relationship with the idea of Great Britain. There is an extensive literature on the origins and character of Australian nationalism. Kate Darian-Smith, Patricia Grimshaw and Stuart Macintyre have recently documented the historiographical debate in former British dominions over whether there existed an identifiable colonial nationalism, as opposed to an extension of British nationalism in the form of ‘pride of race’ and attachment to Anglo-Saxonism. Australian historian Neville Meaney, for example, has long argued that Britishness was simply a dominant cultural myth in Australia.\textsuperscript{71} Despite these historiographical discrepancies over employing the label of nationalism, historians have frequently accepted the existence of a dual attachment to the ideas of ‘Britain’ and ‘Australia’, even if only as co-existing, and to a degree, competing, cultural myths. Russell McGregor has recently argued that Britishness provided an ethnic core to Australian nationalism, making it ‘distinctively Australian while simultaneously and fervently British: a composite nationalism that could be, and in the federation era often was, more accurately designated ‘British-Australian’’.\textsuperscript{72}

\textsuperscript{69} Dalziel, \textit{Evatt the Enigma}, p. 34; Crockett, \textit{Evatt: A Life}, p. 45.
\textsuperscript{70} Kimball, ‘Merely a Facade?’, p. 11.
\textsuperscript{71} Kate Darian-Smith, Patricia Grimshaw and Stuart Macintyre (eds), \textit{Britishness Abroad: Transnational Movements and Imperial Cultures} (Carlton: Melbourne University Publishing, 2007), pp. 233 – 236.
In the early period of the twentieth century, federation provided a middle ground between republicanism and monarchism that ameliorated the frustrations of many with the hegemony of the Crown. The emergence of the Australian nation as an important member of the British Commonwealth presented an opportunity for Australia to evolve out of a position of dependency into one of increasing consultation and partnership, while remaining loyal to the motherland.\(^73\) This was the historical context in which Evatt developed his views on British-Dominion relations. In his award-winning 1918 university essay *Liberalism in Australia*, Evatt made clear the way in which Australian liberalism and democracy were necessarily different to their British counterparts, having evolved out of a distinct history, and not hindered by ‘any closed system of political maxims’.\(^74\) His argument emulated the views of earlier ‘nationalists’ who positioned Australia outside of historically and politically loaded British traditions encumbered by discrepancies in class and by corruption.\(^75\) Evatt viewed the development of a unique liberal tradition in Australia as the source of democratic principle and practice.\(^76\) Democracy, to Evatt was a fundamental element of the system of values that defined Australia. It would remain central to his internationalist vision of the postwar world, being the reason for which Australia would fight in the Second World War. In his later promotion of the UN he would argue that it was ‘imbued with democratic principles,’\(^77\) and that it advanced ‘democratic ideals’ by ‘democratic procedure’.\(^78\)

Tension between commitment to the Crown and the nation was complicated for Evatt by his involvement with the labour movement. In part, the labour movement was influenced by an

\(^76\) Evatt, *Liberalism in Australia*, p. 6.
\(^78\) Evatt, ‘Risks of Big Power Peace’, p. 201.
emerging group of industrial activists who were working class, Irish Catholic and increasingly critical of the hegemony of the British political state in managing Australia’s affairs.\textsuperscript{79} The labour and socialist movements were also infiltrated by a strain of anti-monarchism, the rhetoric of which, criticised the corruption, feudalism and ‘outward trappings of power’ associated with the throne.\textsuperscript{80} It was closely associated with a broader anti-imperialist agenda of separation from Britain.\textsuperscript{81} Clearly the relationship between Australia and Britain was a complex one, but what is missing from these analyses of Australian identification with the Crown is an exploration of the very real legal links that positioned Australia within the web of Commonwealth relations.

**The Constitution and the Crown**

Evatt learnt early, again under the tutelage of his professors, that underlying these debates about the relationship between Britain and Australia was an important legal and constitutional framework.\textsuperscript{82} Both Wood and MacCallum were leading members of the Sydney branch of Round Table groups, established throughout the Empire following the Boer War. The Round Table groups advocated the concept of imperial federation, which involved the creation of an imperial constitution. The aim of such a constitution was to delegate greater influence to the dominions and encourage frequent consultation over the Empire’s affairs.\textsuperscript{83} Evatt was clearly influenced by these debates and in 1917 he contributed an article to the *Australian Worker* assessing the various merits and disadvantages of imperial federation.\textsuperscript{84} Evatt used this article, written in response to one published earlier by Wood, to develop his understanding of the legal association between the

\textsuperscript{82} J. Peden was another professor who had a profound influence on Evatt’s development as a constitutional lawyer, but in a more technical, rather than ideological or political manner. See H. V. Evatt, ‘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: Halstead Press, 1940), pp. 34 – 37.
\textsuperscript{84} Crockett, *Evatt: A Life*, p. 50.
Crown and the dominions. He opposed a formal imperial federation, believing that Australia should retain its own foreign policy despite its association with a single Westminster based power in the eyes of foreign states.\textsuperscript{85} Evatt argued that a flexible approach should be applied to the development of constitutional relationships. Essentially he did not think that a formal document was required for Australian nationalism to evolve. He saw the independence of the dominions developing organically and fluidly out of pre-existing legal relationships.

Evatt’s views on the British Commonwealth evolved in highly legalistic terms. Throughout his career he developed a narrative of Commonwealth development based upon his expansive knowledge of constitutional law. This justified, in his mind, the increasing independence of the dominions, not as completely separate entities from Britain, but within a fluid Commonwealth framework within which all states were equal.\textsuperscript{86} For Evatt, Australian authority to act independently in both domestic and external affairs was absolutely underscored by the legal source of that authority, the Royal Prerogative. The Prerogative of the Crown is the source of governmental power for a dominion. It is written into the Australian Constitution in the body of the executive (being able to exercise the Prerogative in terms of entering into treaties or declaring war without the consent of the Parliament) and in the Governor General who can appoint and dismiss governments. Evatt was committed to the idea that the ‘unity and indivisibility of the Crown as a legal doctrine is the instrument which enables certain at least of the King’s Prerogatives to be exercised with respect to the self-governing dominions of the Empire’.\textsuperscript{87} He defined the Prerogative of the King as an exclusive privilege or right of the Crown that is, in the strictest sense, a part of the common law’.\textsuperscript{88} Evatt argued that the unity of the Crown allows for the very existence of those Prerogatives to operate. He contended that the dominions represented

\textsuperscript{85} Herbert Vere Evatt, (Pseud.: ‘Not at All’), ‘Australian Nationalism and Imperial Federation’, \textit{Australian Worker} (Sydney), Volume 26, Issue 22 (31 May 1917), p. 19.
\textsuperscript{86} Bongiorno, ‘Commonwealthmen and Republicans’, pp. 38 – 39.
\textsuperscript{88} Evatt, \textit{The Royal Prerogative}, p. 12.
‘varying manifestations throughout the Empire of the one Crown’ (emphasis mine)\(^\text{89}\) and that whatever authority is entitled to exercise the Royal Prerogatives, be it ‘Imperial or Dominion or Province or Commonwealth or State – it must be accepted as one far-reaching effect of the ubiquity of the Crown that its Prerogatives are in existence’.\(^\text{90}\) Thus the legal principles at the very core of dominion power, by their existence, strengthened the unity of the British Crown. Historian, J. D. B. Miller, writing in the sixties, recognised that the Monarch had been, ‘at a constitutional level, the strongest and most inescapable tie between the old Dominions and Britain’.\(^\text{91}\)

As Minister for External Affairs during the Second World War, Evatt remained committed to the legal relationship that existed (and exists) between the authority of the Federal Government and its constitutional source, the British Crown. In 1948 he argued that what bound Commonwealth nations was not the supremacy of the British state, but was rather ‘a common allegiance to the Crown’ and their membership of the British Commonwealth.\(^\text{92}\) In an article written for The Times in 1942, Evatt set out what he considered to be the progressive narrative of dominion self-government. The doctrine of equal partnership promoted at the Paris Peace Conference of 1919, in association with each dominion’s autonomous membership of the League of Nations and acceptance of the Treaty of Versailles, celebrated the ‘living fact of integral unity of the British Empire under the Crown’.\(^\text{93}\) He recognised that dominion independence remained subject to the decisions of the League’s British delegates who held plenary powers to act for the whole of the Empire, and to the power of the King who could ratify a treaty that would become effective

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\(^{90}\) Evatt, *The Royal Prerogative*, p. 65.

\(^{91}\) Miller, *Britain and the Old Dominions*, p. 32.


Empire wide. This narrative of progression, within which the Empire evolved towards an association of self-governing and equal dominions, allowed Evatt to both embrace the tradition of imperial kinship ‘which transcends all material links and baffles definition,’ while still advocating a more independent role for Australia on the world stage.

**Internationalism**

Evatt’s dual loyalties, to the nation and to the Commonwealth did not operate so smoothly within the ideologies of internationalism to which he subscribed. In the immediate postwar years, dialogue amongst Commonwealth nations revolved around the Constitution of the newly independent India and how its transition towards a republic would affect its status within and its relationship to the Commonwealth. The British Government favoured a policy of retaining India within the Commonwealth, lest it risk weakening Commonwealth influence throughout its former colonies. Evatt was committed to an internationalist vision that rejected the racial objections posed by some British statesmen to India’s independence. India figured prominently in Australian policy making in the postwar period, with its focus upon regional and multilateral co-operation in line with the new initiatives of the United Nations. It was essential that India and Pakistan remained within the Commonwealth ‘if for no other reason lest another power occupy or extend influence over them’. Maintaining friendly relations with India was vital to Australia’s political and commercial interests in the Asia-Pacific region. Australia hoped to strengthen and promote an India-Australia sphere of influence in the Indian Ocean zone. The importance of

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99 Cablegram, Burton to Gollan, Document 139, Canberra, 12 October 1948, AA: A1838/2, 169/10/6, i, DAFP, Volume 14, 1948-49, The Commonwealth, Asia and the Pacific DFAT.
‘Indian-Australian collaboration’ was expressly recognised by Evatt.\textsuperscript{100} As Meg Gurry has noted, in 1949, Evatt outlined plans for a regional group which would include India, Ceylon, Pakistan, New Zealand and Australia.\textsuperscript{101} Clearly, India figured prominently in Evatt’s vision of Australia as an Asia-Pacific security power in the postwar world. He considered Indian Prime Minister, Jawaharlal Nehru, a personal friend and believed that the future of Asia would depend upon the development of ‘the great Indian sub-continent’.\textsuperscript{102}

Despite this, Evatt opposed the breaking of all legal ties between India and Britain. He pushed for recognition by India of the King in their Constitution.\textsuperscript{103} Britain was eager to accommodate India’s demands for republican status. British Prime Minister, Clement Atlee realised that the historical and political connotations of the term ‘dominion’ were unsuitable and certainly undesired by the populace of India, Ceylon, Pakistan and Burma. Mounting Asian nationalism demanded a new formula from the Commonwealth that would recognise the equality of its members and would place the remnants of empire on the backburner as international relations took their natural course in a period of rapid decolonisation. Atlee realised that what was required was a negotiated political decision, rather than ‘a lengthy examination by constitutional lawyers’.\textsuperscript{104} He advocated an informal discussion amongst the dominions with the hope of coming to some arrangement that would allow India to remain in the Commonwealth as an independent state. The sticking point amongst dominion representatives concerned an issue that Evatt was well versed in; the King’s Prerogatives. Although Evatt was dedicated to Australian involvement in the Asian region and supported efforts to keep India within the Commonwealth,
he was determined that any such arrangement should not involve a termination of India’s legal link to the King.\textsuperscript{105}

Historian Frank Bongiorno has recently addressed the question of Evatt’s involvement in the debates over Commonwealth membership.\textsuperscript{106} It is an issue to which scant attention has, in the past, been paid.\textsuperscript{107} Bongiorno has argued that Evatt’s constitutional defence of the Monarchy, which he had developed in regards to the status of the old-dominions, was inapplicable within the context of Asian nationalism.\textsuperscript{108} Despite Evatt’s advocacy of regional development, he was unable to let go of his somewhat rigid understanding of the King’s Prerogatives. The rigidity of Evatt’s argument may seem out of step with his belief in the organic, fluid nature of constitutional law and Commonwealth relations, but the fluidity of those concepts was never intended to be part of a discourse on legal separation from Britain. Evatt believed that the King’s Prerogative was a legal principle that should always be applied flexibly.\textsuperscript{109} He always saw the growing independence of the dominions occurring within the framework of the Commonwealth. For example, when a Judge of the High Court, Evatt delivered a groundbreaking constitutional decision in the matter of \textit{R v Burgess; Ex parte Henry}\textsuperscript{110} in which he insisted that there was no general limitation on the types of treaties that the Federal Government could enter into under the external affairs power, even if the subject of that treaty was not a subject to which general legislative power had been delegated to them. In formulating this argument he was drawing on the rights and powers delegated to the Federal Government, through the Constitution as an

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\item \textsuperscript{105} Cablegram, Evatt to Beasley, Document 71, New York, 23 April 1949, AA: 1838/283, TS899/6/1, i DAFP, Volume 14, 1948-49, The Commonwealth, Asia and the Pacific DFAT.
\item \textsuperscript{108} Bongiorno, ‘Commonwealthmen and Republicans’, p. 33.
\item \textsuperscript{109} Evatt, \textit{The Royal Prerogative}, p. 141.
\item \textsuperscript{110} \textit{R. v. Burgess; Ex parte Henry} [1936] HCA 52.
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extension of the King’s Prerogatives. Essentially the Government would be exercising the King’s powers on his behalf. Bongiorno has argued that for Evatt, ‘the prerogative provided kingship with its substance at the dominion level, and in the larger setting of the British Commonwealth’. The monarchy was not merely ornamental, but:

legitimised dominion autonomy through the common law. The Monarchy, for Evatt, was not a symbol like a flag; it was the ultimate source of national power, and the most significant link between members of the British Commonwealth.¹¹¹

Thus, while Evatt could envisage a Royal Prerogative that would bend to meet the needs of the Commonwealth Government when extending its constitutional power to control external affairs,¹¹² he could not envisage a Commonwealth that could be bound by any contractual principle other than the Prerogatives and the unity of the Crown.

Evatt wanted India to retain a link to the Crown, at the very least, through its external affairs. At Commonwealth Meetings in Paris in 1948, he lobbied the Secretary-General of India’s Ministry of External Affairs, Sir Girja Bajpai, to maintain a link with the Crown that would involve the King continuing to ‘exercise Prerogative functions in relation to India's external affairs’.¹¹³ What this ‘link’ would mean was essentially the same principle Evatt espoused in Burgess. The source of India’s legal personality in the international milieu would be the British Crown. Indian delegates would be able to operate completely independently of the Crown, but in a legal sense, their authority to do so would stem from the delegation of monarchical power to the Indian Government. When Evatt was made aware of the ‘Ten Points’ drawn up by Nehru, which set out the conditions upon which India would remain in the Commonwealth,¹¹⁴ he was ‘amazed’ by the

¹¹¹ Bongiorno, ‘Commonwealthmen and Republicans’, p. 44.
¹¹² Evatt argued that ‘the Prerogatives of the King develop and an excellent illustration of this is afforded by the growth of the external affairs powers of the self-governing dominion’; Evatt, The Royal Prerogative, p. 141.
absence of any Prerogatives and by the watering down of the Royal link ‘to a stage that it was hardly discernible’. Australia’s High Commission in London, J. A. Beasley, noted that during negotiations Evatt continued to ‘stoutly’ maintain the attitude that a direct link with the King must be preserved.115

By the beginning of 1949, the British Government had given up trying to appease dominion concerns about the Royal Prerogative. Recognising that India would not accept a constitutional link to the King, discussion turned to ‘whether a sovereign democratic republic owing no allegiance to the Crown could remain within the Commonwealth.’116 Bongiorno has documented the way in which Evatt was effectively sidelined in the negotiations towards the end of 1948, being replaced by a far more pragmatic Chifley.117 His public statements on the importance of the Crown and the old ties of kinship to the Commonwealth had made him somewhat of a liability.118 Chifley was more willing to accept the futility of the British position. He conceded that although ‘there would be very great difficulties in retaining India within the Commonwealth should it become a republic’, the most important concern remained the maintenance of friendly relations with India, which Chifley hoped would act as a bulwark against communism in Asia.119 Evatt viewed the Royal Prerogative as far more than a legal fiction. He considered allegiance to the Crown to be an enduring reality. In the postwar period however, when legal certainties were overrun in popular discourse by the ideals of equality, anti-colonialism and human rights, Evatt’s adhesion to a legal structure created in the nineteenth century meant that his policies involved more nostalgia than political expediency.

117 Bongiorno, ‘British to the Bootstraps’, p. 27.
Chapter II

White Australia and the Formation of the United Nations

Evatt’s reputation as an internationalist has arisen predominately out of a common view that he acted as one of the main protagonists at the San Francisco Conference. He is lauded as a ‘champion’ and the ‘most formidable and successful representative’ of the smaller powers.\(^{120}\) Gareth Evans has described Evatt’s contribution to the conference as ‘the stuff of which legends are made’ and has suggested that it is, ‘above all, the Evatt of San Francisco who deserves to be remembered’.\(^{121}\) His contemporaries similarly regarded Evatt as a powerful force at the Conference. Chairman of the US delegation and Secretary of State, Edward Stettinius, announced that ‘no one had contributed more to the conference than Mr. Evatt’.\(^{122}\) Belgian delegate, Henri Rolin, paid ‘personal tribute to that veteran of all committees and all commissions... Dr. Evatt’.\(^{123}\) Even the *New York Times* labelled him as the ‘most brilliant and effective voice of the small powers, a leading spokesman for the world’s conscience’.\(^{124}\)

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In spite of the praise, the positions that Evatt took on various matters at the Conference were not consistently in pursuit of internationalist ideals. At San Francisco Evatt pressed for an amendment to the Dumbarton Oaks draft Charter that would effectively curtail the ability of the UN to propose recommendations when the domestic policies of states were threatening international peace and security. The basis for this amendment was a concern to safeguard Australia’s racially discriminatory immigration legislation. Scholars of Evatt have recognised the degree to which this provision was inconsistent with his professed internationalism. Yet the research on this inconsistency has treated the tension between Evatt’s idealism, rooted in the discourse of human rights, and his protection of a fundamentally racist law as representing either his naturally Australian propensity towards racism, or a blip in an otherwise unblemished internationalist record. This chapter, in contrast, will map out the extent to which Evatt’s amendment went against the grain of international ambition after the Second World War to formally realise universal racial equality. It will make evident how Evatt essentially compartmentalised his internationalist vision for a postwar world from the question of racial equality and it will examine the way in which his views on race and immigration were derived from his involvement in the labour movement, and his adhesion to a constitutional and legal framework.

Dumbarton Oaks, 21 August – October 7, 1944

In late 1944, the four major Allied powers, China, the United States, Great Britain and the Soviet Union met at Dumbarton Oaks in Washington to draft a Charter for a new world security organisation. On the agenda was the question of human rights and the degree to which such rights would be acknowledged and upheld in the Charter. The Chinese delegates immediately made clear their intention to secure racial equality as an underlying principle of the new UN. In taking

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upon themselves the mantle of racial equality, the Chinese delegates were continuing a struggle for its universal recognition that had been initiated by the Japanese at Versailles in 1919. The Chinese proposed that the new UN should uphold the ‘principle of equality of all states and all races’. Their proposal was not supported by any of the other powers. Despite the prevalence of a discourse on human rights within American public rhetoric during the war the American delegation opposed specific reference to race or discrimination on the grounds that it might invite international intervention in their domestic segregation laws. An American commitment to international recognition of human rights was an influential ideal in the State Department during the war. By the time the American contingent arrived at Dumbarton Oaks in 1944 however, their approach to the question of human rights had been tempered on the recommendation of legal experts. American strategy was to support the ideal in principle, but not to consent to the establishment of any means by which rights could actually be enforced. In contrast to the Chinese proposal the Americans suggested a broad principle for the preservation of ‘human rights and fundamental freedoms’. The British and the Soviets opposed both American and Chinese proposals essentially on the grounds that a provision on human rights would undermine the principle of national sovereignty and allow international interference in the domestic affairs of states.

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The Soviet representatives were aware that Stalinist policies of ‘coercive collectivisation, political purges, internal exile and forced labour camps’ would not be easily reconciled with the principle of human rights.\textsuperscript{133} Their diplomatic explanation for opposing the provision was that the philosophy of human rights was ‘not germane to the main tasks of an international security organization’.\textsuperscript{134} The British delegation was concerned that formalising the preservation of human rights would undermine sovereignty and imperial power.\textsuperscript{135} Although the British formally objected to the proposals made at Dumbarton Oaks, diplomat Sir Alexander Cadogan, implied that Britain would support human rights in principle if they could safeguard their domestic affairs in practice. In September 1944, during the Dumbarton Oaks talks, Cadogan advised the foreign office that it ‘would be against our interest and tradition as a liberal power to oppose the expression of a principle, denial of which figures so predominantly in Nazi philosophy and is repugnant to the mass of British and foreign opinion’. Cadogan was also acutely aware of the ammunition that a British denial of human rights would give to the American critics of Empire, whose anti-colonial opinions had become much louder during the war. Like the Americans, Cadogan advocated recognition of the principle without conceding that matters of domestic jurisdiction would become subject to UN scrutiny.\textsuperscript{136}

\textbf{San Francisco, April 25 – June 26, 1945}

In early 1945, delegates from fifty allied nations met in San Francisco to consider the Dumbarton Oaks proposals and to finalise the Charter. The aim of the Charter was to define the new UN; its principles, its structure, the limits upon its capabilities, and its potential. Discussion was heavily

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\item\textsuperscript{133} Susan Waltz, ‘Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights’, \textit{Third World Quarterly} Volume 23, No. 3 (2002), pp. 440.
\item\textsuperscript{134} ‘Memorandum by the Under Secretary of State (Stettinius) to the Secretary of State (Hull), ‘Progress Report on Dumbarton Oaks Conversations- Eighteenth Day’, 9 September 1944, United States State Department, \textit{FRUS Volume 1, (General Diplomatic Papers) 1944}, p. 789.
\item\textsuperscript{135} ‘Memorandum by the Under Secretary of State (Stettinius) to the Secretary of State (Hull)’ \textit{FRUS Volume 1, (General Diplomatic Papers) 1944}, pp. 789, 797, 825; Lauren, ‘First Principles’, p. 11; Johnson, ‘The Contributions of Eleanor and Franklin Roosevelt’, p. 24.
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influenced by the philosophical and legal movements that emerged from previous conflicts and their resultant peace efforts, such as the development of human rights and Westphalian notions of sovereignty. The precursor to the UN, the League of Nations, provided a structural precedent while the two world wars that had marked the first half of the twentieth century provided the motivation. Australia’s delegation to the conference was led by Deputy Prime Minister Francis Forde. Despite Forde’s seniority, it was Evatt who effectively led the delegation, exhaustively campaigning for Australia’s amendments to the Dumbarton Oaks proposals.137

The atmosphere at Dumbarton Oaks had not been conducive to the Chinese campaign for racial equality. The final draft, which was forwarded to all states and non-state actors who would be attending the San Francisco Conference, included only one reference to human rights. Under the chapter dealing with arrangements for international economic and social cooperation was an undertaking that the organisation would ‘promote respect for human rights and fundamental freedoms’. There was no reference to race, ethnicity or discrimination. The only suggestion of equality was ‘the sovereign equality of all peace-loving states’ upon which the organisation would be based.138 Despite the attitudes of the major powers the majority of delegates at San Francisco were determined that the Charter would include recognition of universal human rights. Jan Burgers has identified the Latin American delegates and the US non-governmental groups as having had significant influence over the improvement of the human rights clauses in the final Charter. The US had representatives of forty-two non-governmental organisations (NGOs) acting as consultants, including religious, women’s and labour groups all of whom had been campaigning for human rights during the war.139 Although the only African American organisation asked to attend was the National Association for the Advancement of Coloured

People (NAACP), Marika Sherwood has made clear that lobbyists and students from Africa, as well as African American residents, were influential in their unrelenting efforts during the conference to lobby both the press and delegates whom they believed would be sympathetic to their cause.140

**The Question of Race**

Denial of rights and racial prejudice during the war were not only present in Nazi policies. As Gary Gerstle has argued, the Second World War was in very large part a ‘race war’,141 fought for the defence of racial purity both in the Pacific and the Atlantic.142 The Holocaust had signalled a significant departure from traditional forms of anti-Semitism in Europe, employing scientific discourses to segregate individuals into categories of Jew and non-Jew.143 The racial element of Nazism had posed less of a threat to the Allies than Hitler’s expansionist policies, for, as Hugh Tinker has argued, many people in western democracies accepted the Nazis’ philosophy of racial difference.144 Anti-Semitism had indeed developed, and to some extent been normalised, within a broader Euro-American milieu.145 Race was also a significant element in the Pacific war, revolving around the difference in colour between enemies. Creators of propaganda from both

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140 Sympathetic delegations were considered to be mainly from Arab and African states and also from Haiti; Marika Sherwood, "There Is No New Deal for the Blackman in San Francisco": African Attempts to Influence the Founding Conference of the United Nations, April-July, 1945’, *The International Journal of African Historical Studies* Volume 29, No. 1 (1996), pp. 76, 83.


sides animalised and belittled their opponents.\textsuperscript{146} Michelle Brattain has argued that the ‘tenacity of racism’ was revealed by the incarceration of Japanese Americans, segregation in the armed forces\textsuperscript{147} and race riots, and was founded upon beliefs in the innate inferiority or superiority of certain races.\textsuperscript{148}

Despite the prevalence of racial inequity, the question of human rights had become increasingly significant as the war progressed and news of atrocities, committed not only against minorities in Europe but against prisoners of war in the Pacific, reached the press in allied countries. The resurgence of rights-based discourses fitted into the professed liberal ideology of the Allies and discredited the opposing axis systems of fascist governance.\textsuperscript{149} By the time Allied nations had arrived at San Francisco in April 1945, the enormity of the war’s consequences was being realised. Elazar Barkan has noted that Nazism compelled a collective recognition of the dangers that could result from a misuse of the concept of race and led to a ‘discrediting of racism’ in intellectual discourse.\textsuperscript{150} John Dower has described this process as constituting a ‘revolution in racial consciousness’.\textsuperscript{151}

At San Francisco, under pressure from smaller non-western states and NGOs, the major powers agreed to include in the Charter various references to human rights. The peoples of the UN determined to ‘reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.’ They agreed to

\textsuperscript{146} Lauren, \textit{Power and Prejudice}, p. 139.

\textsuperscript{147} For more on segregation in the armed forces, see Walter Francis White’s report on his investigation of segregation in American units stationed in Britain; Walter Francis White, \textit{A Rising Wind} (Westport: Negro Universities Press, 1971, first published 1945).


‘practice tolerance’ and to promote and encourage ‘respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion’.\textsuperscript{152} There was however, a notable absence from the Charter of the means by which these rights could be enforced.\textsuperscript{153} International law expert Hans Kelsen argued in 1946 that the Charter failed to impose upon UN members an \textit{obligation} to grant rights and freedoms to their citizens. Nor did the Charter provide a means by which individuals could appeal to an international body. The jurisdiction of the newly created International Court of Justice (ICJ) extended only to state actors and provided no recourse to judicial intercession for individuals.\textsuperscript{154} The final nail in the coffin for protection of human rights was the insertion of a clause protecting all members from intervention by the UN in matters considered to fall within their domestic jurisdiction. This safeguard, in Article 2 (7), became a ‘basic principle’ of the Charter at the suggestion of the major powers and as such it operated as a restriction upon the entire working of the UN.\textsuperscript{155} The Article did however, contain a condition whereby any domestic matter could still come under Security Council scrutiny if it required the Council to determine or act on a threat to the peace or act of aggression.\textsuperscript{156}

\textbf{Evatt’s amendment to Article 2 (7)}

Evatt did not believe that this provision went far enough in securing the interests of smaller nations against intervention from the UN. In his view, while the permanent members of the Security Council could safeguard their interests through the use of their veto power, the

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\ref{153} Mazower, ‘The Strange Triumph of Human Rights’, p. 393.
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remaining 45 member states were left vulnerable.\textsuperscript{157} Evatt sought an amendment to Article 2 (7) to ensure that the only permissible intervention by the UN in matters of domestic jurisdiction could be an application of the enforcement measures granted to the Security Council under chapter VII of the Charter.\textsuperscript{158} This amendment essentially proposed to remove from the Security Council their power under Articles 39 and 40 to make recommendations or take provisional measures when a threat to the peace, breach of the peace, or act of aggression arose within the domestic jurisdiction of a state.\textsuperscript{159} Under Evatt’s amendment the Security Council would only be able to intervene if the domestic situation required the drastic military enforcement measures authorised in Article 42.

Evatt was concerned that without this qualification the Security Council could deal not only with acts of aggression but also with their causes, for example a discriminatory immigration policy.\textsuperscript{160} He foresaw the use or threat of force becoming an attractive option for states seeking to extort political concessions by bringing a matter within the ambit of UN scrutiny.\textsuperscript{161} The relationship between this amendment and White Australia was conspicuous. Evatt and Forde cabled Chifley on May 18, arguing that without this ‘essential’ provision:

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it would be possible for an Asiatic Power to object to our Migration Policy and if it could be shown that a threat to peace had arisen the Security Council could proceed to recommend a settlement involving change in our Migration Policy as a condition necessary to remove the threat.\textsuperscript{162}
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\textsuperscript{160} Renouf, \textit{Let Justice be Done}, p. 223.


\textsuperscript{162} Cablegram, Forde and Evatt to Chifley, Document 91, San Francisco, 18 May 1945, AA: A1066, H45/771/1, DAFP, \textit{Volume 5}, 1945, DFAT.
They regarded the matter as one of ‘fundamental importance’ upon which they believed there could be no compromise. Evatt was the chief protagonist impelling acceptance of Australia’s position. As Paul Hasluck has made clear, there was no real conflict on policy at the Conference between Evatt and Forde ‘because only Evatt made the decisions’.

Evatt was successful in his campaign to expand the prohibition on intervention in the domestic affairs of states. However, that ‘success’ arguably negated the value of his other amendments, restricting, as it did, the whole working of the organisation. Evatt had negotiated the expansion of the General Assembly’s powers of discussion despite persistent opposition from the Soviet Union. He saw the strengthening of the General Assembly as an important means of restraining any ‘capricious or unjust exercise of the veto power’. Evatt viewed his role in strengthening the Assembly as a great achievement. Drawing on his commitment to democratic principles, Evatt saw the Assembly as the ‘most democratic organ’ of the UN and as a ‘vital world forum with the ability to act as a ‘watchdog’ on all other organs. He argued that no state ‘could ignore the will of the peoples in the world, expressed through the Assembly’. Yet, for all Evatt’s self-aggrandisement over his role in expanding the General Assembly’s powers of discussion, he was operating the whole time with the belief that Article 2 (7) overrode all other powers granted to the Assembly.

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163 Cablegram, Forde and Evatt to Chifley, Document 91, San Francisco, 18 May 1945, AA: A1066, H45/771/1, DAFP, Volume 5, 1945, DFAT.
164 Hasluck, Diplomatic Witness, p. 191.
165 In negotiations with Soviet Andrei Gromyko and American Edward Stettinius, Evatt secured the current formulation of Article 10 of the Charter which permits the General Assembly to ‘discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12 to make recommendations to the members of the United Nations or to the Security Council or to both on any such questions or matters’.
167 Herbert Vere Evatt, CPD, House of Representatives, Volume 184, 30 August 1945, p. 5037.
Evatt advocated ‘the greatest possible extension of power to the General Assembly while at the same time fighting perversely to limit it by domestic jurisdiction. This latter is now the only gap in the Charter, if indeed such a gap really exists...’

Webster’s observation that the insertion of Article 2 (7) gave rise to a ‘gap’ in the Charter is interesting, suggesting that in the postwar period, international opinion might have been ready to embrace an organisation with a more interventionist approach. It was certainly a shared global desire that the UN would have the legal capacity, the support and the resources to maintain peace and security in a more effectual manner than the League had been capable of. Historians and lawyers writing about the formation of the UN during its early years paid considerable attention to the debates at San Francisco over the wording of Article 2 (7). In so doing, they noted Evatt’s role in pushing for a more expansive prohibition than even the major powers had originally intended. The racial motive behind the amendment was not concealed at the conference. Malcolm Booker has noted that in spite of Australian support for human rights, ‘none at the United Nations was misled as to Australia’s real motives’. Evatt stated expressly at San Francisco that Article 2 (7) was a defensive mechanism in response to pressure brought by Japan before the war upon the Australian Government to change its immigration policy. When campaigning for the extension of General Assembly powers, Evatt had reminded Soviet delegate Andrei Gromyko that Article 2 (7) would ban the UN from intervening in Soviet immigration. Evatt had been advised by the foreign office, in a special memorandum prepared in early June 1945 and entitled ‘World Organization: Racial Equality and Domestic Jurisdiction’, not to

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express his concerns about immigration policy too explicitly at the conference, lest he embarrass India or provoke ‘awkward debate on the colour question’.177 The protection of White Australia was thus the acknowledged and underlying purpose of Australia’s proposals to further strengthen Article 2 (7).

Objections to the Australian Amendment

It is not surprising, therefore, that the Chinese delegation opposed the Australian amendment, arguing that any limitation of enforcement measures would be irreconcilable with the primary objective of the UN to maintain peace and security.178 In 1942, during negotiations for the abolition of extra-territoriality between China and Australia, F. W. Eggleston, Australian Minister for China, explicitly acknowledged Evatt’s aversion to any clause that may ‘break down immigration laws and give the Chinese the right of entry.’ To avoid such a scenario Eggleston devised a reciprocity clause whereby both China and Australia had the right to protect their domestic immigration laws. Eggleston had advised Evatt to talk of an ‘immigration policy’ rather than a ‘White Australia’ policy to avoid controversy.179 It is evident from this cable that as early as 1942 the Australian leadership was employing ‘domestic jurisdiction’ as a defence to accusations concerning immigration restriction and were convinced that such a justification would receive ‘world-wide support’.

The French delegation had originally objected to any curtailment of the organisation’s right to intervene, stating explicitly that ‘experience of recent years’ had made intervention desirable to protect ‘certain unfortunate minorities’. The French had previously suggested their own amendment, completely antithetical to the Australian, which suggested that the ban on

interference in domestic matters may be overridden by ‘a clear violation of essential liberties and of human rights’ which in itself ‘constitutes a threat capable of compromising peace’. While both France and China were clearly protected by the veto power (and the French ultimately withdrew their amendment), smaller states such as Norway also argued that Article 2(7) was ‘tantamount to imposing on the working of the system of international investigation and conciliation very severe limitations’ which may jeopardise international peace and security.

The debates over the Australian amendment clearly demonstrate that small states, including the Latin American and Eastern European states that had campaigned for the inclusion of human rights provisions, were concerned to protect their own domestic affairs from Security Council interference. However, prior to Evatt’s proposal being circulated there had been little concern over the original wording of Article 2(7). In fact, on 17 May, when debating the original major power proposal for Article 2 (7), several delegates felt that the major power amendment should not be accepted, ‘since the council should not be debarred from taking necessary action on the plea that such action might be interpreted as interference within domestic jurisdiction’. Australia then proposed its amendment and on June 5 asked permission from the Committee to postpone discussion of its amendment until negotiations with other delegates had been completed.

Evatt was aware of the value that most sovereign states attached to domestic jurisdiction clauses. There had been a prohibition similar to Article 2 (7), although less restrictive, in the Covenant of the League of Nations\textsuperscript{185} and safeguarding the ‘domestic jurisdiction’ of states had been common practice in international treaties and arbitration agreements prior to the First World War. Under such arrangements contracting parties would agree to withhold from arbitration matters affecting their ‘vital interests of national honour’.\textsuperscript{186} In the interwar years states continued to contract out of their obligations to the League by employing domestic jurisdiction clauses that contained no provision whereby the applicability of such a clause would be determined by an impartial body.\textsuperscript{187} Evatt was well aware of the prohibition’s appeal and relied upon it at San Francisco when attempting to garner support for his amendment. Evatt took advantage of a sense of vulnerability among smaller states over the expansive veto power of Security Council members. Many of these smaller states, who had supported Evatt’s attempt to limit the scope of the veto, were colonies of, or were politically indebted to, one of the major powers. State sovereignty was therefore not an issue they took lightly. Evatt reminded delegates that Australia was not alone in having potentially offensive domestic policies, maintaining that ‘every country... has its own internal problems, its own vital spheres of domestic policy, in which it cannot without forfeiting its very existence as a state, permit external intervention’.\textsuperscript{188} The possibility of intervention vocalised by Evatt at the conference led to a majority of members passing his amendment in patent contrast to the rhetoric of human rights that had animated the conference.

\textsuperscript{185} Article 15, paragraph 8 of the Covenant states ‘If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement’; The Covenant of the League of Nations (Including Amendments adopted to December, 1924) created 1996/updated 08 January 2008, The Avalon Project hosted by Yale Law School, USA, <http://www.yale.edu/lawweb/avalon/leagcov.htm>, viewed 01 August 2008.


\textsuperscript{187} Haines and Porter, ‘Domestic Jurisdiction’, p. 271.

Despite the stand taken by members in support of Evatt’s position, he was still acting in opposition to the internationalist ideals of the postwar period. These ideals were not forfeited by all attendees at the conference under threat of Article 2 (7). The NGO advisers continued to push for a rejection of both Article 2 (7) and the dated notions of sovereignty that underlined it, in favour of human rights. International legal academic Phillip C. Jessup argued in dramatic fashion; ‘we have taught the layman to worship the arch-fiction of the sovereign state and thereby have built a Maginot line against the invasion of new ideas in the international world, and behind that rampart the demagogue and the reactionary are enthroned’. James T. Shotwell, Director of Economics and History at the Carnegie Endowment for International Peace and one of the consultants to the US delegation, adopted a similar line of reasoning. He argued that the Second World War had made it clear that a regime of violence and oppression within any nation of the civilized world was a matter of concern to all the rest. He advised that states, jealous of their sovereignty, should no longer regard foreign expressions of concern for the welfare of citizens as constituting interference in their domestic affairs.189

The thinking behind Evatt’s amendment was ideologically in line with American anxieties over safeguarding segregation and with British concerns for imperial power over colonies. It was in essence an extension of the discourse promulgated by Billy Hughes at Versailles in 1919. The result of Evatt’s amendment, if applied literally, would have been to castrate the UN, leaving it unable to fulfil the objectives of his postwar internationalist vision.190 Yet the allied powers had fought the Second World War under the banners of democracy, freedom and equality191 and the preservation of such liberties was a cause to which Evatt had pledged himself on many

occasions. While Evatt was clearly aware that Article 2(7) would safeguard an immigration policy that restricted entry to Australia on the basis of race, his understanding of racial discrimination was not easily categorised by simple reference to race hatred or allegiance to ideals of racial purity. Evatt’s palpable concern over the threat that UN intervention may have posed to White Australia had complex origins. There is little evidence to suggest that he was openly hostile to other races. In contrast, Evatt’s defence of the policy developed out of his adherence to two somewhat incongruous philosophies; a legal faith in the constitutional and sovereign rights of the Federal Government to make such laws and a commitment to preserving workers’ rights that was fundamental to the Labor Party and to the international socialist movement.

A Constitutional Framework: The Rights and Powers of Sovereign Australia

Evatt was appointed to the High Court in 1930 at the age of thirty-six and served on the bench for a decade. In his judicial decisions on immigration he demonstrated an ‘intimate knowledge of the exclusion provisions of the Immigration Act’. His judgments also revealed that his interest in immigration law was profoundly influenced by his expertise in constitutional law and by his faith in the right of the Commonwealth Government to exercise its Royal Prerogative. Evatt argued that the power to legislate on the subject matter of immigration was clearly delegated to the Commonwealth Parliament in the Constitution. That power ‘authorises legislation directed to

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193 Crockett notes some rare exceptions when Evatt acts in ways that suggest he is racially prejudiced, Crockett, Evatt: A Life, p. 55.
195 Under section 51 (xxvii) the parliament has the power to make laws ‘for the peace order and good government of the commonwealth with respect to immigration and emigration; Attorney’s General’s Department and Australian Government Solicitor, The Constitution; as in force on 1 June 2003, (Canberra: Office of Legislative Drafting, Attorney-General’s Department, 2003), p. 32.
the prevention of the entry of any person who is not... a member of the community of Australia'.

In 1934, he delivered judgment in favour of detained Czech communist Egon Kisch when the Federal Government had attempted to prohibit him from entering the country. Evatt’s biographer G. C. Bolton described the case as a notable victory for civil liberties despite the fact that Evatt had actually upheld the validity of the law under question. Evatt found that the section of the Immigration Act that allowed the Government to declare someone a ‘prohibited immigrant’ for the purpose of their exclusion or deportation, was perfectly valid because it was a law which in substance fell within the subject of immigration. Evatt ordered Kisch’s release from detention, not on the grounds that the Government had no legal right to declare someone a prohibited immigrant or to subsequently detain them, but because on the facts of the case Evatt found no evidence that Kisch was in fact a prohibited immigrant. Evatt acknowledged the drastic character of the law, but argued that it was ‘no more drastic than the power which enables non-Australians coming to Australia to be made prohibited immigrants if they fail to pass a dictation test’.

While on the bench Evatt exercised relative freedom in being able to speak his mind on White Australia. His judicial oratory made evident that he had an extensive knowledge of the political reality of racially discriminatory legislation. In *R v Davey* Evatt declared that the dictation test used to exclude undesirables of non-European background:

> was never intended to be a real education test, or a provision guarding against the entry of illiterates. It was merely a convenient and polite device... for the purpose of enabling the Executive Government of Australia to prevent the immigration of persons deemed unsuitable because of their Asiatic or non-European race.

196 *R v Carter; Ex parte Kisch* (*"Kisch’s case"*) [1934] HCA 50.
198 *R v Davey and Others; Ex parte Freer* [1936] HCA 58.
199 *R v Davey and Others; Ex parte Freer* [1936] HCA 58.
He suggested that it was both common knowledge and official policy that the test ‘was never intended to be applied, and would never be applied, to immigrants of an European race’.200 It was also clear however, that Evatt was willing to uphold any legislation that he believed the Government had a constitutional right to enact. Furthermore, he never challenged the Government’s defence of the policy, which he himself had advocated at international forums in the 1920s, as being a necessary condition to preserve an Australian standard of living.

In the first half of the twentieth-century race thinking was not neatly divided along colour lines. In 1926, J. H. Curle published his eugenicist polemic To-day and To-morrow: The Testing Period of the White Race, which reinvigorated an imperial discourse that placed the British at the zenith of civilisation and located southern and eastern Europeans as the ‘dregs of Europe’. The whiteness of a person’s skin was not the definitive measure of their inclusion in white civilisation.201 In 1935, Evatt wrote an article detailing the riots that had erupted in Kalgoorlie the previous year between Australians on the one side and Eastern and Southern European immigrants on the other. Evatt attributed the violence to an inflammation of racial animosity between different ethnic groups, who were predominantly segregated and all struggling to make a living in the mining areas around Kalgoorlie. Despite this clear acknowledgement of racial disharmony, Evatt’s interest in the affair was excited by the constitutional question of whether the issue was one of law and order, or one of foreign relations, and as such, whether the matter then fell to the State or Federal Government to resolve.202 Similarly, despite having travelled to California at the request of Billy Hughes in 1920 to examine racial tension between the

200 R v Davey and Others; Ex parte Freer [1936] HCA 58.
Americans and Japanese, his analysis of the exclusion and mistreatment of Japanese students by Californian schools was preoccupied by the question of whether, under the American Constitution, the matter was one for the Central or State Governments. His understanding of interracial relations, in both the domestic and international spheres, was evidently greatly affected by his habit of elucidating political problems in legal and constitutional terms.

**White Australia, the Labor Party and Universal Socialism**

Evatt’s support for the White Australia policy is made somewhat problematic by his membership of the Labor Party and his dual responsibilities to endorse the Party’s platform and represent its electoral interests. The Labor Party had actively pursued White Australia since 1905, when, at its federal conference it had pledged to cultivate ‘an Australian sentiment based upon the maintenance of racial purity and the development... of an enlightened and self-reliant community’. Evatt had been involved with the Party at both state and federal level consistently, although to fluctuating degrees, since he was elected to represent the working class seat of Balmain in Premier Lang’s New South Wales Government of 1925. His involvement with the labour movement was not merely political but infiltrated his work at the bar and on the bench of the High Court. From 1920 to 1921 he acted as counsel for the Australian Railways Union before a Royal Commission into the victimisation of unionists during the 1917 railway strike. In 1925, he succeeded in stopping the deportation of the trade union militants Tom Walsh and Jacob Johnson.

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207 *Re Yates; Ex parte Walsh* [1925] HCA 53; Dalziel, *Evatt: The Enigma*, p. 3.
Christopher Waters has argued that fear of Asia and devotion to White Australia bordered upon hysteria and were almost universal within the labour movement. Evatt’s advocacy of complex and seemingly incompatible ideals sits comfortably with the chaos of competing interests that Waters has suggested influenced the Curtin and Chifley governments in the 1940s. Within the movement, ‘isolationism competed with internationalism, pro-Empire traditions competed with nationalist traditions... and there was a strong element of racism’. Restrictive immigration was not however, entirely compatible with the values of the labour and unionist movements. There was a clear tension between the discourses of whiteness upon which Australia had been federated and the universally inclusive approach of socialism. White Australia for Evatt was less a matter of legislating racial intolerance, than it was about preserving Australian standards of living and a white culture shared by the dominions.

Although White Australia was seen as an essential means of securing the rights of the white worker against an influx of cheap labour, it also contradicted the universalism that underpinned the global socialist movement. As Marilyn Lake has identified in her work on Curtin, international socialism adhered to a principle of ‘no concern for race or frontier’. It was about a global humanity and a shared, transnational struggle to secure workers’ rights. When in 1926, Evatt travelled to London to attend the World Migration Conference convened by the International Federation of Trade Unions and the Labour and Socialist International, he strongly upheld the White Australia policy. Yet, while he objected to the Conference’s ‘uncompromising

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208 Christopher Waters, ‘Creating a Tradition’, p. 36.
expression of absolute freedom of migration’ he remained concerned to improve the conditions of workers throughout the world.211

In a way analogous to Curtin, Evatt reconciled the racially discriminatory agenda of White Australia with the conflicting ideal of a united global socialism, not by suggesting that Australia should permit entry to the world’s workers, but by promoting improvement in workers’ rights and standards of living internationally. Evatt, like Curtin, believed that Australia’s immigration policy may be ameliorated if ‘international trade and international relations were better conducted’.212 Australia’s standards of living would not be devastated by an incursion of cheap labour if prospective immigrants had high living standards in their own country.213 This rationale was conterminous with the Federal Government’s practice of inserting reciprocity clauses into immigration treaties. The ideology behind it being that if other countries, particularly in Asia, sought to protect their own migration schemes, then White Australia would be viewed less as a policy of racial discrimination and more as a justified act of economic protectionism. To achieve this result Evatt placed faith in the capacity of international bodies to improve global living standards. In promoting global economic and social security Evatt could alleviate the perceived severity of White Australia, and rationalise the incongruity between it and other postwar humanitarian ideals to which he fervently subscribed. It was for this reason that Evatt pushed for implementation in the UN Charter of a pledge on behalf of all members to pursue full employment, for if the citizens of every nation were prosperous, Australian protection of Australian jobs might not be so offensive.214

212 Herbert Vere Evatt, ‘The Australian Way of Life’, Life Volume 14, Issue 1 (1 February 1943), pp. 55 – 57; See also the draft of this article in EC, Folder: ‘Evatt - Publications - Articles and Essays.
When in the 1940s Evatt had left the court and entered federal politics, he relied frequently upon the fallacious justifications for White Australia that saturated the vernacular of Australian diplomats as they tried to defend an increasingly indefensible policy.215 He more readily employed a defence of the policy that rationalised it as ‘essential for economic and social reasons’.216 In 1943 he argued that the White Australia Policy was ‘based not so much upon racial discrimination as upon hard practical facts’. He reiterated labour movement concerns that ‘a White country which opens its doors to Asiatic migration practically invites a lower standard of living’.217 Evatt was not merely parroting party policy. On the contrary, he was said to have run his department as something of a ‘one man show’.218 Rather, he was drawing on an established Labor discourse that associated workers’ rights with the development of a liberal and democratic state.219 He remained influenced by labour movement concerns for white jobs, and by the eugenicist thinking that suggested non-European or non-British races were too far removed from the civilised practices of ‘white’ culture to participate effectively in a democratic system.220

The argument that Evatt was influenced solely by a positive intention to protect white workers rather than by a negative racism may seem to some extent inadequate. For by the time Evatt entered federal politics he must have been acutely aware of the resentment that Australia’s immigration policy excited amongst her Asian and Pacific neighbours.221 However, the extent to which race thinking, and anti-Asian sentiment in particular, was promulgated during the Second

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216 Cablegram, Commonwealth Government to Atlee, Document 65, Canberra, 24 October 1942, AA:A981, China 60B, ii, DAFP, Volume 6, 1942, July - 1943, December, DFAT.


220 Lake and Reynolds, Drawing the Global Colour Line, pp. 7 – 8, and 26 – 27.

221 Sir Iven Giffard Mackay, Australian High Commissioner to India argued this point explicitly in relation to the opinions of Indians on the White Australia policy in Cablegram, Mackay to Evatt, Document 331, New Delhi, 22 December 1946, AA:A1067, M46/9/21, DAFP, Volume 10, 1946, July-December DFAT.
World War, should not be underestimated. It made White Australia, in the eyes of its supporters, all the more pertinent. Brawley, in his history of the relationship between foreign policy and immigration, has argued that propaganda produced by both Australia and Japan throughout the conflict continually emphasised that disputes over immigration had contributed to the cause of the war. The Japanese persistently criticised the transparent racism of immigration restriction, while Australian public dialogue was pervaded by references to the impending Japanese invasion. Misunderstandings about Japanese population growth and expansionist objectives fuelled concerns that the war would mean the end of White Australia. Contemporaneously, the dominions were struggling against pressure from Britain and the United States to concede to Chinese demands for an end to immigration exclusion and a treaty that publicly declared racial equality. There was certainly some support for Chinese immigration in Australia that developed out of a sense of gratitude for the Chinese war effort. Despite such support and against mounting pressure upon External Affairs’ officers positioned throughout Asia, Australia continued to resist Asiatic immigration and Chinese attempts to challenge what Evatt described as the ‘fundamental national policy’ of White Australia.

The Aftermath of Article 2 (7)

Once the Charter had been signed and the UN began to operate, the issue of domestic jurisdiction proved problematic on many occasions. When debating whether an issue was one of domestic jurisdiction, Evatt tended to make distinctions between those nations which had fought fascism and those which had not. Although he rallied against the interference of the UN in state sovereignty in countries such as Australia, Evatt seemed to have no problem arguing upon the ways in which other nations should be governed. He argued that Italy should be governed by a

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‘genuinely democratic regime capable of eliminating Fascist remnants’.227 In 1946, Britain was advising against interfering with the Franco regime on the grounds that its policies were essentially within Spain’s domestic jurisdiction. In contrast, Evatt was advising his delegates that ‘a government of Fascist origin and tendencies may adopt policies... which will seriously threaten the maintenance of international peace and security.’228 Evatt justified an intrusion of state sovereignty by arguing that there could be exceptions ‘where a policy actively pursued domestically was also directed deliberately towards international friction so that it was not merely or essentially a matter of domestic concern’.229 Similarly, Evatt worked hard to involve the UN in the internal policies of the Greek Government in 1947. He recognised the extent to which the nation’s problems were based on internal oppression and the autocratic nature of the Government. He was confined however by the terms of the UN’s mandate being restricted to the protection of political independence and territorial integrity230 making the matter little more than a border dispute.231

Hans Kelsen argued, in the immediate aftermath of San Francisco, that Article 2 (7) negated any means by which human rights, which were primarily the concern of each state, could be safeguarded. Arguing from a purely legal standpoint, (one that Evatt would have appreciated), Kelsen derisively refuted the idea that human rights were any better protected in the final Charter than they had been when scarcely mentioned in the Dumbarton Oaks draft.232 In pushing his amendment to Article 2 (7) Evatt was sacrificing the efficacy of the UN and the ideals of internationalism to the conservation of old-fashioned Westphalian sovereignty. Historian of the UN, Robert Hildebrand, has argued that many of the shortcomings of the organisation have not

227 EC, Folder: External Affairs – Europe, no date; Buckley et al., Doc Evatt, p. 306.
228 Cablegram, Department of External Affairs to Hodgson, Document 140, Canberra, 24 March 1946, AA:A1838 T189, 854/10/2, DAFP, Volume 9, 1946, January – June DFAT.
229 Cablegram, Department of External Affairs to Hodgson, Document 178, Canberra, 9 April 1946, AA:A3196, 1946, 0.6997/98 DAFP, Volume 9, 1946, January – June DFAT.
231 Buckley et al., Doc Evatt, pp. 307 – 311.
resulted merely out of a failure of application since 1945 but were built into the Charter itself as the language of national security replaced the vocabulary of peace.\textsuperscript{233} Evatt’s failure after San Francisco to involve the UN in struggles against fascist governments illuminates the damaging effect that the ban on intervention in domestic matters had the potential to impose.

Chapter III

Trusteeship and Australian Involvement in Papua New Guinea

At the San Francisco Conference in 1945, representatives of the UN’s member states accepted that a declaration concerning the rights, interests and aspirations of non-self governing peoples should be included in the Charter of the new world organisation. Under Article 73 of the Charter, inhabitants of non-self governing territories would have their well-being promoted to the utmost by their administering state. Each administering state also agreed to assist in the progressive development of self-government and free political institutions and to take due account of the political aspirations of the peoples of each territory.\(^{234}\) Under chapters XII and XIII a new system was established for placing territories under international trusteeship, and for monitoring their operation and administration. Reference to trusteeship was absent from the original Dumbarton Oaks draft and so formal proposals were put forward at San Francisco by the four sponsoring powers and France and Australia.\(^{235}\) Despite Evatt’s tendency to overstate Australia’s role in the formulation of the trusteeship system,\(^{236}\) his primary objectives for trusteeship were generally in line with the ambitions of the major powers. Evatt expected a general pledge covering all non-self-governing territories and also specific arrangements for implementation of that pledge.\(^{237}\)

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\(^{234}\) Article 73, particularly clause (b), Chapter XI, *Charter of the United Nations.*


This was essentially the substance of the working paper drawn up by American delegate Commander Harold Stassen, which brought together the common principles of each delegation’s proposal.\textsuperscript{238}

Throughout the Second World War, debate over the viability of old-world Empires and the morality of colonialism exacerbated antagonism between Britain and the United States.\textsuperscript{239} Anti-colonial sentiment in the US was widespread. President Roosevelt often evoked the powerful discourse of the American Revolution against Britain’s colonial practices and in so doing made complex questions of colonial administration static. Policy makers in the British Commonwealth were often frustrated by the simplifying effect of such language. In an article submitted for the Ninth Conference of the Institute of Pacific Relations\textsuperscript{240} by the Australian Institute of International Affairs (an organisation with substantial influence on the Department of External Affairs\textsuperscript{241}), P. D. Phillips noted that:

\begin{quote}

criticisms of imperialism have too often been promoted by a vague sentiment, uniformed by factual knowledge, of the difficulties of colonial government, of the slow rate of social evolution amongst backward peoples... It is clearly true to say that at the outbreak of the war, and for the first year or so of hostilities, these errors of judgment were conspicuous in... public discussion of an uniformed character. The result was a dangerous development conspicuous in Anglo-American relations.\textsuperscript{242}
\end{quote}

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\textsuperscript{240} The Ninth Conference of the Institute of Pacific Relations took place from January 6 – 17, 1945, in Hot Springs, Virginia. The conference discussion focused upon security in the Pacific. Evatt did not attend but some notable members of the Australian delegation include Sir Frederic Eggleston, Australian Minister to the United States and former Minister to China, K. H. Bailey, Professor of Public Law, Melbourne University, and member of the Australian Delegation at the League of Nations, and Alan Watt, diplomat at the Australian Legation in Washington D.C. during the war. See; Institute of Pacific Relations, Security in the Pacific: A Preliminary Report of the Ninth Conference of the Institute of Pacific Relations, Hot Springs, Virginia, January 6 - 17, 1945 (New York: Institute of Pacific Relations, 1945).
The British and particularly Churchill remained sceptical about the intentions of American policy makers, believing post-war expansion to be the primary motivation behind talk of trusteeship.243 Indeed, views on postwar policy for dependent peoples were not uniform among American officials. The State Department was principally responsible for driving the international discussion of the status of non-self-governing territories. Secretary of State, Cordell Hull, advocated progress towards self-government and timetables for independence in more advanced colonies.244 He spoke of trusteeship as a matter very close to his heart, one to which both he and his department had devoted intense thought and many hours of work and study.245 In contrast to the liberal views of State Department officials, the US Navy and Joint Chiefs of Staff opposed trusteeship, fearing international intervention in the former Japanese mandated islands which were of great strategic importance to the security of the Pacific.246 The views of the US Navy were certainly influential among policy makers and in Congress, despite the idealism of public rhetoric. Raymond Dennett, in an article published on the opening day of the San Francisco Conference, noted that arguments of the US Navy concerning America’s strategic requirements for bases in the Pacific would fall on ‘sympathetic Congressional ears’. He was also convinced that the public would support American control of the Pacific islands in view of the American lives lost fighting to secure them.247

**Evatt’s Position on Trusteeship**

Evatt was not obliged to express any views that were repugnant to his personal sensibilities on trusteeship at San Francisco.248 The official Australian policy on trusteeship had been decided

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247 Dennett, ‘U. S. Navy and Dependent Areas’, pp. 94 – 95.
early in the war. The main feature of it was to promote the ‘welfare and advancement of native peoples’.\textsuperscript{249} Evatt’s rhetoric at San Francisco was simply a continuation of the views he had been expressing during the previous three years.\textsuperscript{250} No doubt Evatt, who had written on the British mandates in 1934 and who was well versed in both the history and legal dimension of the trusteeship question,\textsuperscript{251} was instrumental in outlining the official Australian position. Evatt has been credited with pursuing a very liberal agenda in the trusteeship negotiations and history has accorded him more recognition in this area than he perhaps deserves.\textsuperscript{252} Kylie Tennant has suggested that Evatt not only proposed a system of reporting to advisory bodies, but further that he proposed the general principle of the primacy of welfare and development to the administration of non-self governing territories.\textsuperscript{253} Certainly, this is a claim the Australian delegation made. When Commission II (General Assembly) came together at San Francisco to hear the report of the trusteeship committee, Forde noted that the Australian Delegation was the ‘first to propose officially... that the chapter on trusteeship should contain a declaration of principles’.\textsuperscript{254} While this may be true, the idea of a declaration of principles had been a foundational aspect of American dialogue on trusteeship for many years prior to San Francisco. In fact, Evatt relied upon the history of the idea to promote the extension of principles to all dependent peoples.\textsuperscript{255} He recalled the commitment made by the League of Nations to foster the well-being and development of those peoples ‘not yet able to stand by themselves under the

\textsuperscript{249} Cable, Hood to Shedden, Document 84, Canberra, 8 May 1945, AA: A1066, P45/153/2, ii, \textit{DAFP, Volume 8, 1945} DFAT.


\textsuperscript{251} Herbert Vere Evatt, \textit{The British Dominions as Mandatories} (Melbourne: Melbourne University Press, 1934).

\textsuperscript{252} Louis, \textit{Imperialism at Bay}, p. 545.

\textsuperscript{253} Tennant, \textit{Evatt: Politics and Justice}, p. 168.


\textsuperscript{255} Evatt, ‘Territorial Trusteeship’, pp. 31 – 32.
strenuous conditions of the modern world\textsuperscript{256} and the objective of the Atlantic Charter to secure freedom from want and fear for ‘all men’\textsuperscript{257}.

It is true that Evatt’s appeal for the principles of trusteeship to extend to all dependent peoples was a step further than the British were initially willing to go. When representatives of Commonwealth countries met in London in early April 1945, the British had every intention of strongly resisting any proposal that might be put forward by the United States for multiple or international mandates. The British were only willing to accept a single-power system similar to the mandates created under the League of Nations where a one parent-state took responsibility for a non-self governing territory\textsuperscript{258}. In many ways, their aim was simply to continue their empire, albeit pledging to better administer each colony and to protect the interests of the natives therein. They did not wish to be accountable to any international body beyond the degree to which they had been under the previous mandates system. Britain wanted only to continue the previous system and to bring into it the soon to be annexed enemy territories. In response to the British proposal, put forward by Secretary of State for the Colonies Oliver Stanley, Evatt advocated a general statement of principles that he hoped would apply to all dependent people, whether or not they lived in mandated or ex-enemy territories. In so doing, he saw himself simply keeping up with international public opinion. He argued that such recognition would be a ‘logical and almost inevitable development from past policies and statements’. Evatt conceded that ‘international concern in the welfare of dependent peoples had increased and would increase in future. Public interest was real and criticism could not be avoided’. Failure by British Commonwealth countries

\textsuperscript{256} Article 22, \textit{The Covenant of the League of Nations}.


to acknowledge their responsibilities to territories under their administration would not only provoke criticism but would suggest that colonial powers had something to hide.259

Later, at San Francisco, Evatt would emphasise the need for a system of accountability that would be imposed upon administering powers if necessary.260 He believed not only that the principles of welfare and development should be applied comprehensively but that the requirement of reporting to the UN should be made obligatory rather than voluntary.261 Evatt was instrumental in having inserted into the Charter a duty upon administering powers to report to the UN.262 Article 73 (e) required administering powers ‘to transmit regularly to the Secretary-General...

information... relating to economic, social, and educational conditions in the territories for which they are respectively responsible’.263 This provision would later act as a technical aid to colonised peoples seeking independence, a consequence that Evatt did not foresee and actually opposed.264 Evatt did not go significantly further than the British position. His proposal to extend principles of welfare to all dependant peoples had been foreshadowed in a Draft Constitution of International Organization prepared by the US Department of State in July 1943.265 He did not suggest that non-self-governing territories should be administered by an international body, the consequence of which would be the relinquishing of all control over Australia’s interests in Papua and New Guinea and the collapse of all European empires. Rather, he wished the new international body to have advisory functions and to be empowered to make reports and visit

261 Evatt, ‘Territorial Trusteeship’, p. 33; See also Hudson, Australia and the Colonial Question, p. 25.
263 Article 73 (e), Charter of the United Nations.
264 Hudson, Australia and the New World Order, p. 138.
dependent territories. Furthermore, he did not suggest that administering powers should be forced to enter into trusteeship agreements. While Evatt supported international supervision, he did not envisage international control and did not promote timetables for independence. As Huntley Wright has argued, his ‘position stopped well short of the system of international administration proposed by Hull’.267

There were more liberal positions than Evatt’s put forward at San Francisco. Carlos P. Romulo, head of the Philippine delegation, proposed that the term ‘independence’ be inserted as a general principle of trusteeship in the chapter’s preamble, arguing that in doing so, he was speaking for the 600,000,000 people not represented at the Conference.268 Delegates representing the NAACP, Mary McLeod Bethune, Walter White and W. E. B. DuBois, demanded an end to colonialism, a transition to autonomy and representation for colonised peoples on the Trusteeship Council.269 Iraqi delegate, Fadhil al-Jamali, criticised the new trusteeship system on the night that the fourth Committee was meeting to congratulate itself on finalising an outline for the system. He argued that it disregarded the wishes of dependant peoples as to their choice of administering power, denied them access to the Trusteeship Council and provided no specific regulation as to how a trusteeship could be terminated.270 Even the Soviets pushed for the UN to have greater control over colonial administration. Head of the Soviet Delegation, Vyacheslav Molotov, stated at a press conference on 7 May, that dependent countries must be enabled to ‘take the path of independence’.271 Having no direct responsibility (at least in a formal sense) for colonies, meant

that the Soviets were free to present themselves as the vanguard of anti-colonialism. Evatt’s position on trusteeship was out of step with progressive internationalist discourses in the postwar period primarily because these discourses were incompatible with his ideas on race and his vision for Australian dominance in the Pacific. It was in the Australian Trust Territory of Papua New Guinea that the tensions between these various ideologies became most apparent.

**Tutoring the Uncivilised: A Gradualist Position**

The term ‘independence’ was ideologically loaded in the postwar period and strenuously avoided by even those who considered themselves opposed to colonialism. William Roger Louis has argued that Roosevelt, like Wilson before him, was a gradualist who ‘foresaw the possible independence of colonial peoples only after a period of tutelage by the ‘parent’ states’. Cordell Hull recalled in his memoirs the ‘irremovable objection’ to the word ‘independence’ of British Foreign Secretary Anthony Eden. In his analysis of Evatt’s position, Louis suggests that Evatt too was a gradualist and that although he probably did not envisage independence for New Guinea in the twentieth century, ‘he would not have opposed it’ had it occurred. On the contrary, although Evatt was insisting in late 1945 that the UN could only be effective ‘if its legal and constitutional framework’ met the ‘growing and changing needs of the peoples of the world’, eight years later he was still insisting that the granting of autonomy to Papua New Guinea would result in ‘disorder, anarchy and the destruction of tribal life’.

The great empires had never disguised their concerns about the trusteeship provisions. The French, like the British, wanted only an extension of previous systems governing ex-mandatory

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277 Evatt, EC, Folder: UN Trusteeship, undated but obviously written in late 1953 or early 1954.
and ex-enemy territories. A completely opposing view was taken by the Chinese and Soviet delegates who insisted that the Charter should recommend the ‘development to independence’ of colonial peoples. The term independence was initially favoured by the American delegation also, but concerns over losing Hawaii to a nationalist ideal eventually changed the minds of most delegates. They managed to still appear to support independence however, by including the term in chapter XII as an objective of the system rather than in the declaration of principles in chapter XI which mentioned only self-government. The Americans had also managed to secure their own strategic interests in ex-Japanese mandated Pacific islands with the insertion of an exclusion clause for ‘strategic areas’. Any function of the UN concerning those strategic areas was to be exercised by the Security Council where the US had the veto power.

In the postwar period international momentum for change to the style of colonial administration that had dominated nineteenth century political relationships increased. Leland Goodrich, in one of his many analyses of the UN, noted that the war ‘had so discredited colonialism as to make it no longer defensible in traditional terms’. Although nineteenth century scientific claims of inherent racial difference could no longer be applied to colonial peoples, this did not mean that colonial practices did not continue under the guise of a reformed rhetoric. Scott MacWilliam has recently argued that the impetus for change merely forced a renegotiation of the relationship

279 The Chinese proposal suggested that the ‘basic objective of the trusteeship system’ should include the promotion of ‘progressive development toward independence or self-government as may be appropriate to the particular circumstances of each territory and its people’, ‘Draft Proposals of the Chinese Delegation on International Territorial Trusteeship’, 10 May 1945, Document 2, Documents of the United Nations Volume 3, p. 615.
280 The Soviet amendment suggested that the aim of trusteeship should be ‘to expedite the achievement... of full national independence’, ‘Amendments of the Soviet Delegation to the United States Draft on Trusteeship System’, 11 May 1945, Document 2, Documents of the United Nations Volume 3, p. 618.
282 Louis, Imperialism at Bay, pp. 538 - 541
between nationalism and British Imperialism. Evatt endorsed the ideals of welfare, universal full employment, economic development and human rights because he believed that global security was dependent upon the elimination of human suffering. He subscribed to the ideal of positive peace; that peace was a condition needing to be actively maintained. Evatt referred frequently to Roosevelt’s Four Freedoms Speech and the language of the American-British Atlantic Charter of 1942. He maintained that Australian security, development and prosperity were conditional upon the collaboration of peace loving nations to ensure that ‘all men in all the lands shall live out their lives in freedom from fear and want’. This reliance upon rights based discourses however, obscured the actual policies of the Australian Government in the Pacific and specifically in Papua New Guinea. The rhetoric of trusteeship and Australia’s commitments to colonial reform were inseparable from Australia’s strategic and commercial interests in the Pacific.

While Evatt was promoting universal welfare and self-governance for dependant peoples, Australia was ‘building an empire’ in Papua New Guinea. In late 1946 Australia submitted to the General Assembly a trusteeship agreement on New Guinea in accordance with Articles 78, 79 and 81 of the Charter. Under the agreement, Australia’s powers of administration were extended rather than limited. Papua was brought into joint administration with New Guinea and, unlike the restrictive position of their previous mandate, Australia was able to secure the islands militarily. Chifley wanted the agreement to obtain for Australia ‘complete and exclusive power

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288 Herbert Vere Evatt, CPD, House of Representatives, Volume 176, 14 October 1943, p. 569.
289 Wright, ‘Protecting the National Interest’, p. 66.
290 Hudson, Australia and the Colonial Question, p. 83.

In practice, the rhetoric of humanitarian treatment of dependent peoples worked concurrently with an expansionist political agenda in Papua New Guinea. With his professed purpose being to ameliorate the economic condition of the natives, Evatt could combine the ethics of trusteeship with the pursuit of economic benefits for Australia. MacWilliam has argued that Evatt and Commander in Chief of the Australian Armed Forces, Sir Thomas Blamey, had analogous views on the duality of ethical principles and commercial advantage. Blamey was advising the Commonwealth Government in 1944 that Australia could ‘use policy on the highest moral level as a justified weapon of power politics to protect not only the future of the native peoples... but the strategic security of Australia’. In Papua New Guinea he saw morality coinciding happily with expediency.\footnote{Blamey to Curtin, 4 February 1944, p. 5, Commonwealth Record Series, MP742/1, item 284/1/57, National Australian Archives, quoted in MacWilliam, ‘Papua New Guinea in the 1940s’, p. 33.} Similarly Evatt’s constant espousal of the principles of welfare and economic justice operated in Papua New Guinea to justify a continued Australian presence there. He wrote in The Daily Telegraph in 1943 that there was room for great industrial expansion for Australia in the undeveloped markets of the north and that never had a ‘good neighbour policy’ been more desirable in the interests of all concerned.\footnote{Herbert Vere Evatt, ‘These Should be Our Seven War Aims’, The Daily Telegraph 18 August 1943, p. 6.} For Evatt, his faith in the concept of positive peace as a means of preventing war, was contingent upon administering powers raising the standard of living in each trust territory and ensuring that the ‘ordinary man’ had opportunities for

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  \item \footnote{J. B. Chifley, CPD, House of Representatives, Volume 188, 7 August 1946, p. 3853.}
  \item \footnote{MacWilliam, ‘Papua New Guinea in the 1940s’, p. 30.}
  \item \footnote{Blamey to Curtin, 4 February 1944, p. 5, Commonwealth Record Series, MP742/1, item 284/1/57, National Australian Archives, quoted in MacWilliam, ‘Papua New Guinea in the 1940s’, p. 33.}
  \item \footnote{Herbert Vere Evatt, ‘These Should be Our Seven War Aims’, The Daily Telegraph 18 August 1943, p. 6.}
\end{itemize}
employment and could share in the ‘benefits of modern means of production’. This charitable proposal would benefit not only dependent peoples but would also ‘increase world trade and thus benefit the peoples of other countries’.296

The gradualist position of most allied leaders was not so different to nineteenth century justifications of colonialism based upon the civilising missions of western states in the innately uncivilised cultures they occupied. International law academic, Antony Anghie, in his recent work on imperialism and sovereignty, argued that in the twentieth century the problem of cultural difference was no longer presented in terms of a distinction between civilised and uncivilised but rather in terms of the ‘backward’ and ‘advanced’. Essentially it signalled a shift from racial and cultural to economic categorisation of difference. This shift did not operate to eliminate power imbalances. In contrast, it imbued international law with new types of control and management. Measuring the advancement of a people by reference to economic criteria was in many ways more dangerous than previous civilisational discourses because it replaced a vocabulary that was ostensibly racist with a series of concepts that appeared neutral and quantifiable.297 The threat of continued imperial domination that lurked behind the idealism of global welfare and in the infantilising terminology of colonial ‘tutelage’ and ‘parent-states’ did not go unnoticed in the postwar period. NAACP representative at San Francisco, Walter White, argued in 1945 that ‘the United States, Great Britain, France, and other Allied nations must choose without delay one of two courses – to revolutionise their racial concepts and practices, to abolish imperialism and grant full equality to all of its peoples or else prepare for World War Three. Another Versailles Treaty providing for ‘mandates’, ‘protectorates’, and other devices for white domination will make such a war inevitable (emphasis mine)’.298

298 White, A Rising Wind, p. 154.
Australian Interests in the Pacific

In Evatt’s vision for the postwar world, Australia would play a dominant role in maintaining security in the Pacific. In a speech given at the San Francisco Commercial Club in April 1945 Evatt declared that ‘having fought in two wars to preserve democracy and international decency’ Australia considered itself a Security power, ‘that is to say, a power not only willing and able instantly to fight for the maintenance of international order but also awake to the issues and ready to take an initiative toward decisions affecting the maintenance of international order’.

Australia’s location in the Asia-Pacific region however, meant that race was destined to substantially affect the role Australia would play and the kind of policies a postwar government would bring to the region. White Australia remained a central part of this vision. Evatt argued in 1943 that Australia’s security in the Pacific was contingent upon population growth based upon ‘the principle of White Australia’ and the ‘encouragement of migration of suitable migrants’ (emphasis mine).

The Australian-New Zealand Agreement of 1944 also contained a provision that every government had the right to control immigration to all territories within its jurisdiction. The agreement, of which Evatt had been the principal author, was formulated in response to Evatt’s frustration over not being consulted by the major powers in key negotiations for postwar reconstruction. Failure to consult Australia left Evatt with a fear that all post war settlements would continue to be determined exclusively by the major powers.

The Australian-New Zealand Agreement was a result of Evatt’s anger that ‘decisions affecting the future of certain portions of the Pacific and vitally affecting both Australia and New Zealand were not only

299 Evatt, ‘Summary of a Speech given by Evatt at the San Francisco Commercial Club’.
made but publicly announced without any prior reference either to the Australian or the New Zealand Government’. 303

In the Agreement Evatt took the bold step of asserting territorial aspirations and making clear his intention to make Australia a key player in the Pacific region. The Agreement brashly stipulated that disposal of Pacific territory after the war should only be done in consultation with both Australia and New Zealand. 304 Wright has noted that their territorial ambitions resulted from a fear of American domination in the Pacific 305 yet Evatt was certainly keen to have an American military presence north of the equator, believing that such a scenario would improve ‘the security of Australia and the whole world’. He wanted ‘reciprocal facilities’ whereby both ‘America and Australia should have access to American bases in the Philippines’. 306 In 1944, Evatt was arguing for the restoration of the French Empire in contrast to the views of American and South African leaders. He also envisaged extension of Australian sovereignty over the New Hebrides, at least to the extent that Australia should ‘take over the British share of the condominium’. 307 Evatt hoped that Australia could develop a ‘buffer zone’ to safeguard Australia from the north ‘that would include Portuguese Timor, Dutch and Australian New Guinea (including New Britain and New Ireland), the Solomons, the New Hebrides and New Caledonia’. 308

Huntley Wright has suggested that when Evatt spoke of economic justice as a fundamental prerequisite for peace he was not referring to the administration of Papua New Guinea, rather he

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305 Wright, ‘Protecting the National Interest’, p. 67.
307 Cablegram, Evatt to Curtin, Document 132, Canberra, 5 May 1944, AA:A989, 43/735/302, DAFP, Volume 7, 1944, DFAT.
was arguing for the need to bring an end to the Greater East Asia Co-Prosperity Sphere. Wright contends that Evatt based his case for colonial reform upon the ‘illegitimate’ imperialism of the Japanese Empire and not on the ‘reality of non-development’ in Papua New Guinea. Evatt was undoubtedly critical of the Japanese Empire which during the war extended to Manchuria, China, the Philippines, the Netherland Indies, French Indo-China, Thailand, British Malaya, Burma, Papua and New Guinea. Commentators on Japan in the west also argued that an intention existed to extend the sphere to Australia, New Zealand and India. Evatt was appalled by the ‘atrocious cruelties’ committed by Japanese soldiers and as such became passionate about the prosecution of Axis leaders for war crimes. He called for the trial of Japanese Emperor Hirohito when no other Allied leaders thought it advisable. As Malcolm Booker has noted, the Allies had just committed, ‘without real military need, one of the greatest war crimes in history’, the atomic bombings of Hiroshima and Nagasaki. Trying the Japanese for war crimes was thus viewed by some as ‘judgement by the greater criminals of the lesser’. The morality of western war aims had been severely damaged by the bombings and diminished the sense of pride in victory for many. In September 1945, Evatt made a statement in London on Japanese war-crimes, calling for the prosecution of perpetrators in battle and the leaders of what he labelled a ‘system of terrorism’.

In his internationalist rhetoric on positive peace and the importance of Native welfare, Evatt had compartmentalised the colonies and former mandates of democratic western states from those that were run by governments that he viewed as essentially fascist. In his capacity as chairman of

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309 Wright, ‘Protecting the National Interest’, p. 67.
310 A. J. Grajdanev, ‘Japan’s Co-Prosperity Sphere’, Pacific Affairs, Volume 16, No. 3 (September 1943), p. 311.
311 Herbert Vere Evatt, CPD, House of Representatives, Volume 180, 30 November 1944, p. 2531.
312 Booker, The Last Domino, p. 71.
a working committee for the Far Eastern Commission, Evatt reported in November 1945 on the principles and objectives of postwar surrender policy for Japan. Included in the recommendations was democratic governance in conjunction with limitations upon Japan’s sovereignty and complete demilitarisation.\(^{315}\) The gradualist discourses to which Evatt subscribed allowed him to negotiate the major tension of the trusteeship system. He was able to endorse the idealism of welfare and democratic freedoms so central to international oratory on trusteeship, while concurrently advancing Australia’s status as a Pacific power and consolidating Australian control over Papua New Guinea.

In 1946, when at the Paris Peace Conference, Evatt was asked by a Swiss reporter to define democracy. After providing a straight-forward description of electoral processes, Evatt stated that Allied soldiers had come to Europe to ‘help overthrow tyranny’ because they ‘believed in democracy and they believed in it enough to fight for it and to die for it far away from their homes and their loved ones’.\(^{316}\) Evatt’s vision for a postwar world was founded upon his belief that ‘peace is not merely the absence of war’.\(^{317}\) He had faith in the positive notion that increased living standards through full employment and the granting of democratic freedoms would prevent the frustrations that lead states and individuals to resort to armed aggression. Evatt therefore regarded the UN as more than a vehicle through which to police international relations\(^{318}\) or to impose obligations upon states restricting the use of force. Evatt was unequivocal when he stated that ‘a permanent system of security can be made effective and acceptable only if it has a foundation in economic justice’.\(^{319}\) In the postwar period, the belief that global democracy was a necessary condition of peace was well established and was an essential philosophy of the UN.\(^{320}\) It is the commitment that Evatt showed to ‘a world in which the Four Freedoms of President Roosevelt would be a reality’\(^{321}\) that has led both political historians and Evatt’s biographers and contemporaries to label him an ‘internationalist’.


\(^{321}\) Evatt, *The Task of Nations*, p. 235; and see the draft of this speech, ‘Talk by Dr. Evatt, President of the United Nations Assembly from 1948 to 1949’, ABC Radio, in AA: SP369/1, 1697, Box 3: The United Nations.
As it pertains to Evatt, the label ‘internationalist’ does not however, provide a straightforward means by which to classify and categorise his views, his policies, and his ideological understanding of the way in which a postwar world would operate. Evatt’s pursuit of an independent foreign policy through an ‘extension of [Australia’s] external commitments’ in the Pacific and involvement in multilateral diplomatic forums was not simply a rejection of the supremacy of Whitehall. It is certainly true that Evatt’s pursuit of an autonomous international personality for Australia was a pioneering step for Australian foreign affairs. His actions went against the grain of popular opinion in Australia. In response to the independent position Evatt adopted at the San Francisco Conference, Robert Menzies declared, that ‘whilst a new world Charter may have a value which is as yet untried, our relationship with the British Empire has a value which has been proved in circumstances of very great trial over many generations’. Polls taken in 1945 and 1946 showed that only thirty percent of the Australian population supported the promotion of a foreign policy independent from that of Britain and other dominions. Amongst non-Labor Party supporters that figure dropped to a mere sixteen percent. Evatt’s strategy to have Australia recognised internationally was not only innovative but was also successful. In 1942, the American publication Pacific Affairs noted that the Australian Government was ‘no longer content to follow the leadership of the United Kingdom’ and had begun to act ‘independently on a footing of national equality’. The author, G. W. Warnecke, paid particular attention to Evatt, declaring that Evatt had given up ‘his seat on the High Court bench because of his conviction that Australia was now adrift on uncharted international seas, with the guiding lights of an older epoch flickering out’.

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322 Frederic W. Eggleston, Foreword to *Australia in World Affairs* by Evatt, Canberra, 1 August 1946, p. vii.
Equality of race, gender and nation were all recognised in the preamble of the Charter formulated at San Francisco. In the chapters on trusteeship however, gradualist discourses that graded colonised peoples as dependent or backward, meant that the ideal of equality did not exist in practice. The nationalist agenda that Evatt pursued, securing a greater role for Australia in the Pacific as a security power, resulted in Australia reinforcing its control over Papua New Guinea. Despite the centrality of ‘native welfare’ to official Australian policy, such welfare remained inherently connected to strategic and commercial interests. Although it may not be possible to judge the sincerity of Evatt’s commitment to the ideals of universal equality that he espoused, it is clear that he saw a greater need for the operation of those ideals in colonies and trust territories not administered by democratic states. Evatt had been committed to democratic principles since he had first penned his essay on Australian liberalism in 1918 and throughout his international career he continued to view democracy and fascism as oppositional systems, the former being a precondition for peace and the latter, a surety for war. As a result of this ideological segregation, Evatt was willing to accept the continuation of colonial practices by Allied governments if they were enveloped in a ‘reformed colonial’ discourse that prioritised native welfare.

Evatt’s biographers have been drawn to the national commitment that Evatt demonstrated at a time when many Australian citizens still considered themselves principally to be British subjects. Yet, historical considerations that place Evatt’s commitment to the nation in opposition to the policies of Britain need to be tempered by an understanding of his adhesion to the Crown. Evatt did not believe that Australia’s right to exercise all the Prerogatives of sovereignty meant that Australia should separate from Britain. On the contrary, he argued that the Federal Government’s power to act as a sovereign body in international relations was dependent upon the fluid and
evolving nature of the constitutional relationship that bound Australia to the Crown. For Evatt, commitment to the monarchical substance of the Constitution was more than a formalistic adherence to the letter of the law. The Commonwealth to Evatt was not merely a legal fiction or an historical relic, but a political and cultural reality. Through a devotion to the legal framework that united the Crown, the colonies and the dominions, Evatt was able to negotiate the tension between Australia’s status internationally and the remnants of Britain’s Empire. While this framework operated to benefit the culturally comparable dominion states by enhancing their international positions and retaining an official and symbolic association with the Crown, it could not be made compatible with the ideals of racial equality, anti-colonialism and independence for dependent peoples that were so integral to the postwar internationalist agenda.

Although historians have recognised the inconsistency between Evatt’s endorsement of universal human rights and defence of White Australia, little focus had previously been paid to the extent to which Article 2 (7) went against the intentions and principles of the international community in the postwar period. While a changing discourse on the meaning of ‘race’ certainly did not eliminate racism from the practice of international politics, it did make racial inequality an objectionable rationale for discriminatory policies such as White Australia. When Evatt pressured delegates at San Francisco to adopt his amendment to restrict the interventionist capabilities of the new UN, he was effectively promoting the removal of the final means through which the international community could safeguard human rights without resorting to armed enforcement. In complete opposition to his advocacy of positive peace, Evatt’s amendment effectively meant


328 For an important example of the ways in which anti-racial discourses were not immediately adopted and the horrors of Nazism not immediately realised; see Tony Judt’s analysis of the continuation of anti-Semitism in Europe, directed against returning Jews for many years after the end of the Second World War. Judt argues that although the Holocaust has now become ‘the very definition and guarantee’ of Europe’s restored humanity, its position as such must be historicised by the remnants of anti-Semitism that were not eliminated in Europe by the allied victory. See Tony Judt, *Postwar: A History of Europe since 1945* (London: William Heinemann, 2005), pp. 803 – 831.
that the UN could only react to, rather than prevent, instances where states curtailed the human rights of citizens. International lawyer, Lawrence Preuss, argued that if applied literally ‘Article 2 (7), with its narrow and limitative proviso, would have the effect of paralysing all action by the United Nations to bring about the peaceful settlement of any dispute of domestic origin.’ In practice however, the new UN found ways to avoid the rigidity of Article 2 (7). As Rosalyn Higgins has argued, matters considered to fall within domestic jurisdiction are ‘incapable of capture and crystallisation for all time’. As early as 1946, delegates in the General Assembly were arguing for intervention to safeguard human rights. Panamanian Foreign Minister, Ricardo Alfaro, emphatically declared that human rights had been ‘taken out of the province of domestic jurisdiction’ and ‘placed within the realm of international law’ by the Charter formulated at San Francisco. Alfaro’s view on which matters should be considered domestic and which international was clearly very different to the views of Australia and the major powers. This discrepancy goes some way to explaining how Evatt’s amendment to Article 2 (7) was passed in an international environment so concerned with the formalising of human rights.

In 1995, Gareth Evans argued that Evatt defies easy labelling. In the same speech however, Evans went on to label Evatt as ‘Australia’s first genuine internationalist’. The term internationalist is not easily defined and employing it to characterise Evatt’s ideologies is incredibly problematic. Although Evatt publicly devoted himself to the ideals of universal democratic freedom and equality and to the concept of international community embodied by the UN, these commitments were not the sole criteria upon which he devised Australian foreign policy. Evatt may have been inspired by Wendell Willkie’s vision for ‘one world’ but his commitment to the legal substance

332 Evans, Evans on Evatt, p. 29.
of the Crown, to the necessity of White Australia, and to the advancement of strategic and commercial interests in the Pacific, effectively preserved remnants of the power imbalance between white and non-white, sovereign and colonised, backward and advanced, that had dominated the pre-war world.
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