

Rocky road for the oldest civil liberties group

The somewhat rocky history of civil liberties in Victoria clearly demonstrates the difficulty there, as throughout Australia, of maintaining a small voluntary group, and of retaining a non-party political stance. It also shows that such groups depend absolutely upon the dedication of an individual, or a small group of people, to survive.

The first recorded push by white settlers for rights in Victoria came in the 1840s, when petitioners wanted the felicitously-named “Australia Felix” to be separated from New South Wales. Eventually, after many petitions, the rather more prosaic “Port Phillip District” became a colony, formally named Victoria by a British act of 1850 signed by the very Queen herself, and by an act of the NSW legislature, signed a year later on 1 July 1851, just as gold rushes were starting in both states. Victoria went from about 77,000 people in that year to about 540,000 just 10 years later, creating huge tensions in a society self-amalgamated by the main chance.

One of the first documented instances of these diverse individuals standing up for their collective rights in the colony of Victoria occurred in 1854, in an armed rebellion against the government by miners protesting against mining taxes (the 'Eureka Stockade'). While British troops rapidly and savagely crushed the uprising, there was much public sympathy for the miners: within a few years, leaders of the rebellion had become Victoria parliamentarians. The Eureka Stockade came to be regarded by some as a crucial moment in the development of Australian democracy.¹



An Italian, Raffaello Carboni (photo), was there, and addressed the 29 Nov 1854 “monster meeting” with “10,000 diggers and 15,000 people”, speaking for the “aliens” (foreigners):

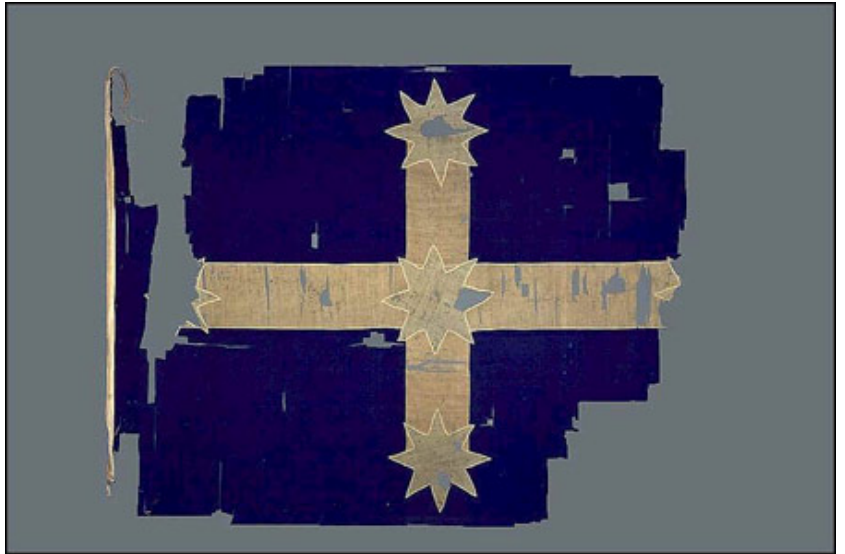
I...called on all my fellow-diggers, irrespective of nationality, religion, and colour, to salute the 'Southern Cross' as the refuge of all the oppressed from all countries on earth. -- The applause was universal, and accordingly I received my full reward:²

Like many Australians, Raffaello Carboni thought the Eureka flag was noble-born:

¹ www.australia.gov.au/about-australia/australian-story/eureka-stockade See also Ch 1.

² From Raffaello Carboni's *The Eureka Stockade*, Melbourne 1855, reprinted Sunnybrook Press 1942 Ch XXIX

The 'SOUTHERN CROSS' was hoisted up the flagstaff -- a very splendid pole, eighty feet in length, and straight as an arrow. This maiden appearance of our standard, in the midst of armed men, sturdy, self-overworking gold-diggers of all languages and colours, was a fascinating object to behold.



There is no flag in old Europe half so beautiful as the 'Southern Cross' of the Ballaarat miners, first hoisted on the old spot, Bakery-hill. The flag is silk, blue ground, with a large silver cross, similar to the one in our southern firmament; no device or arms, but all exceedingly chaste and natural.³

The miners swore allegiance to their cause, literally underneath their new flag, on the Thursday before the fateful Sunday of the massacre:

"Some five hundred armed diggers advanced in real sober earnestness, the captains of each division making the military salute to Lalor, who now knelt down, the head uncovered, and with the right hand pointing to the standard exclaimed a firm measured tone:

"WE SWEAR BY THE SOUTHERN CROSS TO STAND TRULY BY EACH OTHER, AND FIGHT TO DEFEND OUR RIGHTS AND LIBERTIES."

"An universal well rounded AMEN, was the determined reply; some five hundred right hands stretched towards our flag.

"The earnestness of so many faces of all kinds of shape and colour; the motley heads of all sorts of size and hair; the shagginess of so many beards of all lengths and thicknesses; the vividness of double the number of eyes electrified by the magnetism of the southern cross; was one of those grand sights, such as are recorded only in the history of 'the Crusaders in Palestine'."

Many have claimed that the Eureka Stockade was a battle over licence fees only, and so is a poor foundational national freedoms event. But that was not how Carboni and crew saw it, nor was it the view of the authority-in-situ, the Commissioner:

³ op cit Ch XXXVII. The flag was first flown on Thursday 30 Nov 1854. The standard bearer that day, and at the Eureka Stockade, was "Captain" Henry Ross, a Canadian, of Toronto, who was shot dead by soldiers (Ch XXXIV).

Mr. Rede (Resident Commissioner): "It is all nonsense to make me believe that the present agitation is intended solely to abolish the licence. Do you really wish to make me believe that the diggers of Ballaarat won't pay any longer two pounds for three months? The licence is a mere cloak to cover a democratic revolution."

Mr. (George) Black⁴ acknowledged that the licence fee, and especially the disreputable mode of collecting it at the point of the bayonet, were not the only grievances the diggers complained of. They wanted to be represented in the Legislative Council; they wanted to 'unlock the lands.'⁵

Right: Black Hill, overlooking the Ballarat diggings, in 1861.

Estimates of how many lost their lives around the Eureka Stockade massacre vary. At least 22 miners and 6 soldiers died in the fighting, but it is thought an equivalent number may have later perished because of wounds received on the day⁶. The behaviour of the government and the soldiers generated an upwelling of public support for the diggers and created the climate for fundamental laws increasing individual rights:



Mass public support for the captured rebels in the colony's capital of Melbourne when they were placed on trial resulted in the introduction of the Electoral Act 1856, which mandated full white male suffrage for elections for the lower house in the Victorian parliament, the second instituted political democracy in Australia. As such, the Eureka Rebellion is controversially identified with the birth of democracy in Australia and interpreted by some as a political revolt.⁷

⁴ Former editor of the Digger's Advocate, a newspaper which had failed. He and Carboni Raffaello were part of a delegation seeking to prevent the massacre which occurred

⁵ op cit Ch XLII

⁶ Eureka Rebellion https://en.wikipedia.org/wiki/Eureka_Rebellion

⁷ ibid

Generally, those on the conservative side of politics play down Eureka as having little significance beyond newly-landed, “get rich quick” miners and their dislike of fees. Those on the other side of politics see Eureka as the first foundation stone in a workers’ rights movement that, a quarter of a century later, resulted in creation of the Labor Party after a major strike by rural workers at Barcaldine in Queensland in 1891. One noted independent, international observer thought it very significant:

“... I think it may be called the finest thing in Australasian history. It was a revolution – small in size; but great politically; it was a strike for liberty, a struggle for principle, a stand against injustice and oppression. ... It is another instance of a victory won by a lost battle. It adds an honorable page to history; the people know it and are proud of it. They keep green the memory of the men who fell at the Eureka stockade, and Peter Lalor has his monument.”⁸

After a rebellion, and succeeding at least in part by way of winning new mining laws, Victorians’ next memorable clash over rights occurred around 1880 when Ned Kelly became the game of a police chase, which ended in his armoured battle at Glenrowan and subsequent hanging at Melbourne Jail. Ned’s story is well known, but behind the conflict with the Irish Kelly family lay disputes over land, governed by various Land Selection Acts, covering vast swathes of property owned by wealthy squatters. Police supported the rich over the poor, as was customary.



After Kelly’s demise, a Royal Commission into the Victorian Police Force lasted 18 months (1881-1883), severely castigated many officers and aimed to improve police systems...as has been the custom of the many sporadic inquiries into police forces across mainland Australia over the 140 years since.

Left: The Royal Commission into the Victorian Police Force in session.

Victoria in the 1880s had become a major world financial centre for white Australians, who were enjoying a massive boom. Victorians were “filthy rich” (in Australian vernacular) during the decade, suffered a

⁸ American author Mark Twain, *Following the Equator*, 1897. Centuries after the event, there are monuments and memorials to Eureka in many places, and to the miners’ leader, Peter Lalor (1827-1889) who was elected to the Victorian Legislative Council in 1855. A federal electorate named after him does not include the stockade site, which is in the adjoining Ballarat federal electorate.

sudden and major depression in the 1890s, became a State of Australia on Federation in 1901 and, indeed, the prime state for a time: Melbourne was the capital of the new nation from 1901 to 1927, when Canberra in the Australian Capital Territory took over. During the years from Eureka to the world depression in 1930, the people of Melbourne were mostly too busy to concentrate on liberties and rights: certainly Aboriginal rights were not in their thinking. But there was a legal case in 1922 that was to have ramifications in the following century.

Kevin Morgan, in his book *'Gun Alley'*, describes a New Year's Eve 1922 case of wrongful conviction that took 80 years to correct. Alma Tirtschke was a 12-year-old schoolgirl on a shopping errand in inner-city Melbourne when she went missing. She was discovered naked, dead, near a wine shop in a laneway next day. The wine shop owner Colin Campbell Ross was convicted on circumstantial evidence and hanged, in a botched execution, on 24 April 1922. One of the key pieces of evidence was strands of hair from the dead girl, and from a blanket in Ross's house. For the first time, the state government analyst gave evidence about comparing hairs in an Australian courtroom, and his confusing findings helped ensure the guilty finding.

In the mid-1990s, author Morgan discovered the hair samples were still held in the Office of the Director of Public Prosecutions. Modern techniques demonstrated conclusively that the hairs were from different people, strongly suggesting Ross's innocence. On 22 May 2008, Ross was granted a Queen's pardon, and is the first, and so far only (2018), pardon for a judicially executed person in Australia.

But more than that, the case nearly a century ago was a precursor of rabid media coverage, and it led apparently to legislative change to jury laws which affects us today. During the trial, the editor of Melbourne's evening newspaper, the *Herald*, ran sensationalist coverage generating public hysteria, media criticism of police and politicians and – probably – bringing forth unreliable “witnesses”. In media terms, not much has changed: the editor in 1921-22 was Keith Arthur Murdoch (later Sir Keith). His son is Keith Rupert Murdoch, known as Rupert. Of Murdoch senior, it is said, officially:

He was not to be allowed to forget an early experiment in sensationalism when the Herald 'tried and convicted' the 'Gun Alley' murderer. ⁹

(Senior Detective Fred) “Piggott and John Brophy,” Morgan is quoted as saying, “were good and competent men feeling the enormous weight of public expectation of an early arrest. They were investigating in a climate of public hysteria, intense media scrutiny and political pressure to get a conviction.”¹⁰ Again not much has changed today

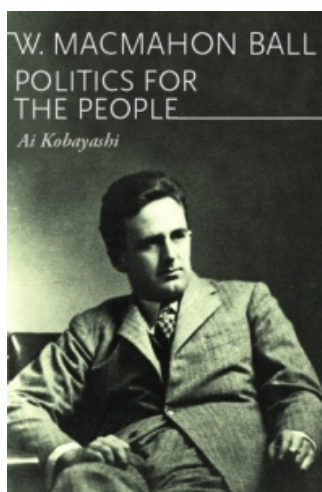
⁹ <http://adb.anu.edu.au/biography/murdoch-sir-keith-arthur-7693>

¹⁰ <http://www.theage.com.au/news/books/wrong-man-hanged/2005/07/08/1120704555156.html>

throughout Australia where media pressure and police tunnel vision and confirmation bias combine to produce wrongful convictions.

It is said that the Murdoch media pressure in the Gun Alley case led to the total anonymity of jurors in Victoria, in that they cannot choose to self-identify. If that is so, it is part of an ongoing problem in Australia where jurors enjoy absolute protection to be wrong without reason. Perhaps Keith Rupert Murdoch would like to bequeath \$5m for civil liberties bodies to run an inquiry into whether the jury system is serving Australia as poorly in the 2020s as it did Ross in the 1920s.

The genesis for the current style of civil liberties movement in Melbourne occurred in the early 1930s. Massive events were playing out internationally: recovery from the Great Depression, the rise of fascist dictators in Europe and militarism in Japan that would lead to the Spanish Civil War and World War Two. Locally, disquiet grew over book censorship, which was what most affected and irked academics and intellectuals trying to keep pace with new thinking on the other side of the globe.



Censorship decisions were in the hands of the federal Minister for Customs, who, in practice, “...enjoys the powers of a dictator, to determine what the people of Australia may read” as a leading critic, William Macmahon Ball, stated.¹¹

Left: 2013 book¹² on Ball, who went on to be foundation professor of political science at the University of Melbourne, and Australia’s Minister to Japan.

A number of incensed people, many associated with Melbourne University, formed the Book Censorship Abolition League in November 1934. The League took its campaign to the public: a meeting on censorship in the Town Hall was well attended. Ball turned to the real power in the United Australia Party in government, Robert Menzies (who was his neighbour), and Menzies immediately relaxed censorship on political works. The League appears to have morphed into the Council for Civil Liberties, with a number of the same people involved.

The small ‘l’ liberal forces which had propelled the BCAL became disappointed with Menzies as Attorney-General, especially when he invoked the political clauses of the Crimes Act. The government demanded the Communist Party of Australia (CPA) and the Friends of the Soviet Union (FSU) should show cause why they shouldn’t be declared illegal organisations. With international and national events tending

¹¹ Adam Carr, *Intellectuals and Politics in 1930s Melbourne*, events leading to the formation of the Australian Council for Civil Liberties 1914-1937 Hons Thesis section 6

¹² *W. Macmahon Ball: Politics for the People*, Ai Kobayashi, Australian Scholarly Publishing 2013
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repressive, Melbourne's liberal intelligentsia could see dark days ahead unless they organised a contrary movement. They held tactics meetings in late 1935, motivated by wanting to replicate in Australia the English National Council for Civil Liberties (NCCL). In minutes from an early meeting, it is noted:

*"It was decided that further information about the English organisation should be sought by the committee. The committee was given power to ...secure co-operation and, if possible, affiliation with the English NCCL. The committee was...to call a general meeting of the organisation when progress had been made along the lines laid down in these motions"*¹³.

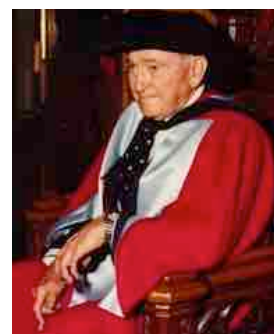
Vance and Nettie Palmer, Australian literary giants, known internationally and noted for their social consciences, were delegated to write to Ronald Kidd of the NCCL in London, seeking affiliation. It was even suggested Kidd might become a vice-president of the new Down Under body, but that proposal failed to eventuate.

While Australia was clearly a new, independent nation in theory, the people who formed the Victorian-based "Australian Council for Civil Liberties" felt the need to refer to an English civil liberties body for validation.

*"A short resume of the objects and scope of action of the English body...was accepted as an expression of the aims of the new body."*¹⁴

Further, the new group sought cooperation with and even affiliation to the English CCL. Imperial approval having been secured, a public meeting establishing the ACCL was held on 6 May 1936 at Centenary Hall in Melbourne. Prominent writers, artists, lawyers, and academics – including historian/journalist Brian Fitzpatrick – formed the Australian Council for Civil Liberties to offer "a means of expression to those people who believe that social progress may be achieved only in an atmosphere of liberty".¹⁵ People from a range of backgrounds filled executive positions, though most came from the city's intellectual, academic and artistic circles. Despite its early concern with issues affecting the labour movement (eg the Crimes Act), there were no representatives of trade unions in top positions.

Herbert 'Joe' Burton (pictured, later in life, in academic regalia), having been the interim president, gave the main speech and moved the adoption of the draft constitution. He spoke of the need to oppose the fascist tendency observable in many countries. Burton (1900-83) was an economic historian and educationist who



¹³ Carr, op cit

¹⁴ ibid

¹⁵ Ibid

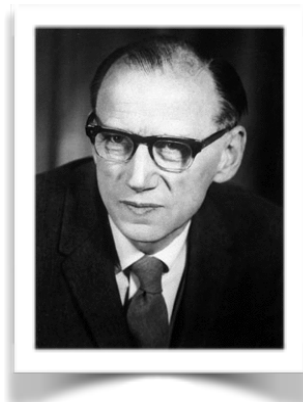
later headed Canberra University College (1948-60) and the School of General Studies at the Australian National University, ANU (1960-65). He remained as foundation President (1936-40) of the (Australian) Council for Civil Liberties while on the



academic staff of The University of Melbourne.¹⁶ The elected vice presidents included Eugene Gorman, Jack (JV) Barry, Professor Sandy Gibson, James Hill, Max Meldrum, Bill Slater MLA, Professor Harold Woodruff, JG Atkinson and Vance and Nettie Palmer.

Left: William (Bill) Slater was at various times Speaker of the Victorian Parliament, Attorney-General and Solicitor-General. Once a law clerk articulated to Maurice Blackburn (see later), he founded the prominent firm Slater and Gordon.

The executive committee included Theo Lucas (secretary), Molly Bayne (treasurer), Geoffrey Leeper (photo right), Dorothy Davies and Brian Fitzpatrick, who soon became the lynchpin of the organisation (Davies was to be his second wife, four years later). He remained its general secretary for 26 years, becoming the ‘father of civil liberties in Australia’: he even “helped to form the Victorian Council for Civil Liberties (VCCL) before his death in 1965” as the current manifestation of the movement for freedoms and rights, Liberty Victoria, says on its website¹⁷. However, we have jumped ahead two civil liberties bodies in one sentence.



The Council had to decide on priority issues. There were notable tensions between members favouring a more conservative approach and those who endorsed activism. Although Fitzpatrick and Barry saw the repeal of the political aspects of the Crimes Act and misuse of the Immigration Act as the most important issues, others on the executive wanted a wider agenda.

In 1937, the Council launched a publication, *The Case against the Crimes Act*. It was a powerful polemic, describing the Crimes Act as the most retrogressive enactment, a product of hysteria and fear. It appears to have had some effect, as an ACCL delegation to Menzies was able to convince him that some objectionable sections should be reformed. In September 1937, Menzies announced that he would review the act after the October election and that prosecutions of the CPA and FSU would be abandoned.

The Curtin Labor government came to power in October 1941, following the collapse of the Menzies and Fadden governments. The Council, chiefly under the influence of Fitzpatrick, decided on a dramatic change of operational strategy, effectively shedding

¹⁶ <http://explore.moadoph.gov.au/people/herbert-joe-burton>

¹⁷ www.libertyvictoria.org Oct 2014

its non-political stance and adopting a far more conciliatory and non-critical role towards the government. In fact, members of its executive were prominent figures in the government. For example, the president by then was Maurice Blackburn, lawyer, parliamentarian (Member of the House of Representatives 1934-1943) and public figure. Fitzpatrick argued wartime circumstances justified the changed approach, because of practical difficulty of making representations to busy ministers. As well, the Council was more confident in gaining a sympathetic reception from Labor. It would no longer seek out issues and push for legislative change, because that might antagonise the politicians. Author James Waghorne put it this way:

“Tactful appeals by private letters to individual ministers would be more effective than public condemnation”.¹⁸

This policy led to Fitzpatrick engaging in private lobbying of HV Evatt, who had left the High Court to become the Federal (Labor) Member for the Sydney seat of Barton in 1940 and, in 1941, the federal Attorney-General and Minister for Foreign Affairs. Evatt believed in legislative safeguards against executive power, and was generally sympathetic to civil liberties, but he could be touchy if criticised. The Council’s new approach replaced attempting public mobilisation with discreet private lobbying.

Right: The man who, for many years, ‘was’ the Victorian Civil Liberties Council, Brian Fitzpatrick.



The tactic was endorsed by JV Barry, but Vance Palmer was less confident that Evatt would maintain his liberal ideals. The altered approach was evident in practical ways: a public campaign for rights of refugees would spotlight a contentious issue and cause embarrassment to the government. Fitzpatrick’s word-in-the-ear strategy shielded the government from criticism while still gently encouraging the adoption of Council policies. Fitzpatrick gained executive support for his altered policies in March 1942.

However Maurice Blackburn was severely critical of the “sotto voce” approach. Blackburn had been expelled from the ALP (for the period 1935-37 for voting in favour of sanctions against Italy: after re-joining, he was again expelled in 1941, presumably for – presciently – being a member of the Australia-Russia Friendship League. He did not rejoin Labor¹⁹). Blackburn believed it was his duty to raise controversial issues, and also believed non-government organisations should not accept wartime restrictions on their activities because of the difficulty of regaining independence later.

¹⁸ *Tempering the Wind: Brian Fitzpatrick and the Australian Council for Civil Liberties under the Curtin Labor Government: chapter author James Waghorne* Ch 5: pp 97-118 in Stuart Macintyre and Sheila Fitzpatrick (eds) *Against the Grain: Brian Fitzpatrick and Manning Clark in Australian History and Politics* Melbourne University Press 2007

¹⁹ <http://primeministers.naa.gov.au/primeministers/curtin/key-people.aspx>

Maurice McCrae Blackburn

Maurice Blackburn (photo right) was Member of the Victorian Legislative Assembly for Essendon between 1914 and 1917, when he lost his seat for being a fervent anti-conscriptionist, and anti-war. He returned to the Victorian Parliament in 1925 as MLA for Fitzroy and in 1933 became Speaker. In 1934, he won the inner-Melbourne seat of Bourke in the House of Representatives which he held until 1943. He was the only federal MP to vote against introducing overseas service for conscripts in February 1943. Blackburn campaigned against fascism from the early 1930s, and was president of the Australian Council of Civil Liberties from 1940. His continuing legacy is the major Australian law firm which bears his name.²⁰



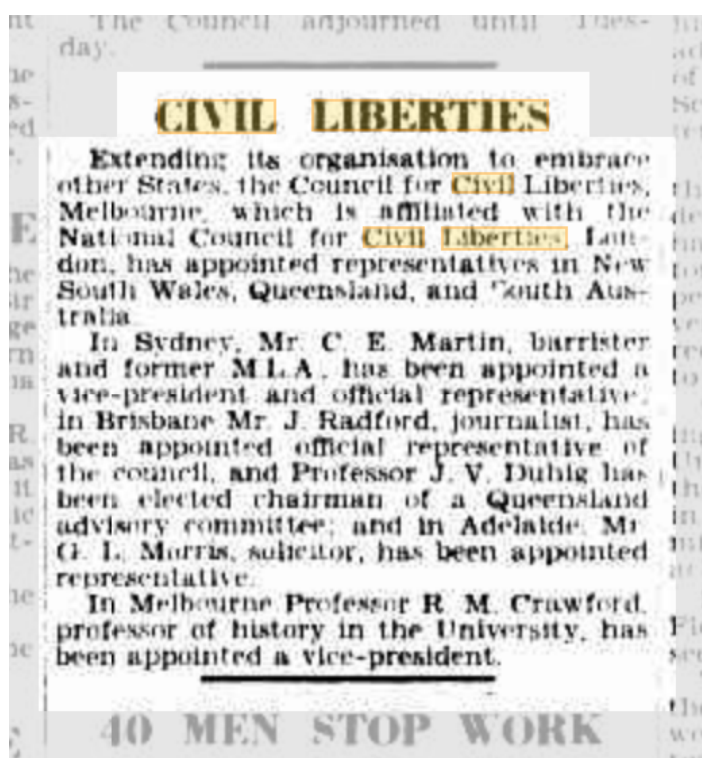
Maurice Blackburn portrait: *Maurice McCrae Blackburn (1880-1944), by H. D. S. , 1942*
La Trobe Picture Collection, State Library of Victoria, H40271



His wife, Doris Blackburn (left), was an equal in activism who followed him into politics. By taking his old seat of Bourke in 1946, she became the second female Member of the House of Representatives. She served as president of the civil liberties body in 1948 – an unusual position for a female at the time – and went on to be a founder of the Aborigines Advancement League.

Doris Amelia Blackburn (1889-1970), by unknown photographer 1940s. National Library of Australia, nla.pic-an23193553

The Council established interstate “advisory committees” in late 1938 – but the Melbourne executive, which basically supported the change in policy towards appeasement of the federal Labor government, remained the controlling core. At this time, WA had 20 members and Queensland 74 associate members and 32 affiliated societies. The state branches had a much stronger communist influence and were more engaged in defending individuals. They tended to trust governments far less. As well as the other state appointments (see panel at right), the ACCL also appointed



²⁰ Maurice Blackburn Lawyers

medical practitioner Dr Jacobs in Perth, and lawyer Jim Fagin in Tasmania. No-one was appointed in the territories, ACT or NT. Minutes of an ACCL meeting noted that no lawyer in the ACT “could afford” to be appointed, presumably so as not to be marked as a critic of government, rather than because all lawyers in the national capital were poorly remunerated.

The invasive war threat to Australia in 1942 strengthened Fitzpatrick’s arguments for not actively working to disrupt the federal government, which was legislating ever-more stringent controls on the economy, the workforce and the activities of civilians: eg the new Regulation 77²¹, which enabled the government to use services and property for “more effective prosecution of the war”.

Only Blackburn opposed the act in parliament, condemning a lack of safeguards. Prime Minister John Curtin defended the government’s position. While conceding that the regulation gave totalitarian power, he stated that it was necessary in the war threat circumstances and pledged that rights would be protected because the government would not abuse its powers. The Council made a private appeal to Curtin, calling for repeal of Regulation 77 on the grounds it was unnecessary, arbitrary and poorly drafted. This request was not released to the press: it drew a dismissive note from Curtin’s secretary.

Fitzpatrick’s view was that the letter was not sufficiently obsequious.

*“...the Council exists to maintain our democratic institutions, not to express uncompromising democratic theory.”*²²

This attitude led to the ACCL not defending the case of right wing Australia First members. While the ACCL considered the views of the Australia First Movement reprehensible, it was not prepared to alienate the government by taking up the cases. The basic principle of civil liberties was jettisoned for pragmatic reasons. The government suppressed AFM in 1942 and interned some of its members.

In 1942, the Council issued a pamphlet analysing Labor’s record in office. Entitled *Liberty and the Labor Government*, it described reforms, such as changes to the National Security Regulations concerning refugees, dissidents and conscientious objectors which had been made despite greater threats to national security. The negatives were principally the fact of governing by regulation, eg Regulation 77.

Against Fitzpatrick’s conciliatory approach, Council members became more reluctant to overlook the government’s infringements of civil liberties. This was apparent most clearly in the debate over the ban on the Communist Party. The issue had been a core

²¹ <http://trove.nla.gov.au/newspaper/article/108420033>

²² Waghorne op cit p110

concern since the banning of the party in June 1940, because it violated democratic rights of free association.

In July 1942 the WA advisory committee requested the Melbourne executive to initiate a campaign to have the ban lifted. When there was no reply, Quentin Gibson in WA decided to act unilaterally, which resulted in a telegram from Melbourne warning him to desist. The reason given was that negotiations were under way with Evatt, and nothing should be done to disrupt them. This did not satisfy Gibson, who stated that the pragmatic approach avoided the principle at stake: lifting the ban on all organisations, not just one. Ambiguous laws could be exploited by local authorities. Fitzpatrick maintained that the Council's influence was minimal – despite “influence” being the reason for non-criticism – and confrontation would limit the possibility of success.

However, even the Melbourne executive members were restive and determined that, if the ban were not lifted in a week, the Council would issue a public statement. Fitzpatrick, unable to arrange a meeting with Evatt, reluctantly wrote to him, pointing out the anomaly of forming diplomatic ties with the Soviet Union while the ban on the Communist Party of Australia remained. The call in the letter was not founded on the basic right of freedom of association, but gave practical political reasons. The CPA ban was finally lifted in December 1942.

Another issue on which Fitzpatrick's pragmatic approach lost out in the executive vote, in 1943, was on Curtin's Militia Bill, permitting conscripts to be deployed in South East Asia. Fitzpatrick argued that objection by the Council could antagonise the government, was unlikely to succeed and could isolate the Council by aligning it with anti-war elements. Fitzpatrick demonstrated his control by insisting that the protest not be made public. He prevented the Council from taking actions which he deemed would be adverse to the Labor government, and he supported government legislation, such as Evatt's Constitutional Alterations Bill of 1942, which aimed to give the Commonwealth powers for a national plan of post-war reconstruction.

The Australian economy was to be constructed around the goals of economic security, social justice and the individual. The states failed to agree and the matter was put to a referendum in 1944. Council members were appointed to the Prime Minister's Committee of Twenty – including Fitzpatrick – to propose wording for the referendum, and to other important government committees.

The ongoing support for the government, because it was Labor, instead of standing publicly for principles, affected the Council deeply and compromised its role as an independent critic and evaluator of government policy. Many members left the Victorian Council, and interstate committees became disenchanted, resenting the Melbourne executive's betrayal of core principles, as the far-flung states interpreted the core group's behaviour. In 1943, the Queensland committee went into recess, and a

year later, the WA committee declined. Departing interstate vice-presidents included industrial relations barrister Jack Sweeney, who two decades later was one of the three co-founders of the NSW Council for Civil Liberties (see NSW chapter).

After the Curtin government was re-elected in September 1943, Roy Rawson (standing in as general secretary) called for the Council to end its deference to government and be more outspoken on controversial issues. He moved for a membership drive in 1944, and took steps to ensure that the executive could not be stacked.

At the same time, Fitzgerald was finally becoming critical of the Labor government. Frustrated at the lack of reform, he fell out with Evatt. In June he publicly attacked the Catholic faction of the ALP Victorian executive and was expelled from the Labor Party. He joined Rawson in trying to rebuild membership, but the essential element of faith had been lost, and was extremely hard to regain.



Despite the interstate losses, people willing to serve on the Council were still impressive. After Maurice Blackburn died suddenly, the new committee was led by John (later Sir John) Barry, who had been a foundation vice-president in 1935, and included writer Frank Dalby Davison, Crayton Burns (a wartime publicity censor²³, and father of the better-known *Age* editor, Creighton Burns) and barrister, jurist and Jewish community leader, Maurice Askenasy.

Above: John Vincent William Barry (1903-1969), by unknown photographer, National Library of Australia, nla.pic-an22986320

The end of the war in 1945 removed the need for most national security regulations and wartime censorship ceased. A 10-year anniversary dinner in December 1945 celebrated the Council's successes, but it was really then in decline. The Council had lost its interstate committees: the base contracted to Melbourne. The "Australian" CCL – as a 'national' body – had lasted only about five years. Centralised control from Melbourne and non-responsive central attitudes to concerns by state branches did not sit well with independently-minded state bodies, by definition free thinkers.

"Under the national Labor government, the Council was greatly weakened." ²⁴

The deliberate strategy of avoiding taking a public position on civil liberties topics and a seeming inability to respond to post-war issues hampered its operation. Immediate post-war activities included public debate on issues the ACCL had not previously acted on, such as ethnic, gender and indigenous rights. The group as a whole was keen

²³ https://en.wikipedia.org/wiki/Eric_Butler ...for confirmation of the different spelling of first names

²⁴ James Waghorne and Stuart Macintyre *Liberty: A history of civil liberties in Australia* UNSW Press 2011 P 78
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to maintain a separation between social issues and issues concerning civil and democratic rights.

The atrocities of the war years had paradoxically ushered in a period of enormous gains for liberties and rights. The war had generated much international public and academic discussion around the idea of creating a set of principles for human behaviour towards each other.

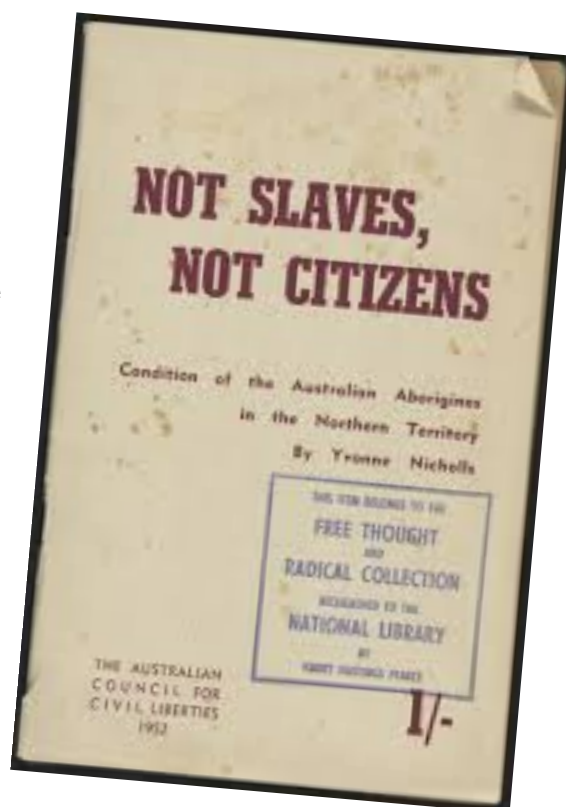
The formal product of this discourse came in December 1948 with the UN Declaration of Human Rights, which stressed the universal nature of inalienable rights of peoples: but to the Council, civil liberties depended upon the civil society in which they operated, balancing the circumstances in each case.

The VCCL's ambivalence towards a formal Australian document spelling out citizens' rights was reflected in its public stance:

*"...the Council favoured political oversight in parliament rather than judicial enforcement of a Bill of Rights."*²⁵

The Council produced pamphlets on the rights of refugees, aiming to influence public attitudes. In October 1945 the Council represented Indonesians who had been jailed in Australia at the request of the Dutch government, successfully lobbying for the men to be transported to republic-controlled Indonesia.

Other key issues for the post-war period were considered but not acted upon, such as the Palestinian issue, analysis of the Australian Constitution, revision of the Crimes Act and gender equity. Minor cases of police misconduct were addressed. A committee investigated the issue of Aboriginal land rights, which was made more complex by the myriad of state and local regulations covering Aboriginal affairs. The Council did not get involved with the establishment of a rocket range at Woomera, but did work with the NT Workers Union organising a conference on Aboriginal working conditions: a pamphlet printed and distributed in 1951 supported Aboriginal voting rights. The Council supported other activists, rather than itself becoming active in the campaign.



²⁵ ibid p67

“The Council’s activities fell into a pattern which would continue throughout the Cold War. It prepared detailed analysis of draconian legislation, demonstrating precisely how it undermined civil liberties. Seldom did these analyses secure amendments...It’s arguments grew more principled as the national security claims ratcheted up.”²⁶

DENIES BEING RED

John Edward Bennett, 35, of Upwey, journalist and radio commentator, denied that he was a secret communist who disseminated propaganda which communists frequently applauded.

He denied ever having been a communist or knowing Sharpley, apart from a brief introduction in 1944.

Questioned by Mr. Reynolds, Bennett said it was partly a coincidence that he joined the Labour Party and became Labour Call editor and 3KZ commentator all within a few weeks. He had had considerable experience as political roundsman for the Australian Broadcasting Commission, and was qualified for the jobs.

Bennett denied ever having been criticised by Australian Labour Party members while he was editor of the Labour Call.

CIVIL LIBERTIES

Brian Charles Fitzpatrick, author, journalist, and radio commentator, denied membership of the communist party or participation in communist activities. He said that as secretary of the Council for Civil Liberties he had always been prepared to listen to anyone, including communists, who felt his liberties were threatened.

The Cold War threat of communism gave new impetus to the Council, but at the same time made it a target of government suspicion and surveillance. For example, under a new act called *Approved Defence Projects Protection*, the police could prosecute communists if they were engaged against Australia’s strategic interests. The Council lobbied Evatt to amend the law as being too far reaching, but was unsuccessful.

Naturally, an organisation which stood up for liberties and rights came under suspicion itself, and members of the Executive were called to explain themselves during the ‘Reds under the beds’ years.

Illustration: Report in the Courier-Mail Brisbane 10 Aug 1949. John Edward Bennett later became an important figure in Victorian civil liberties affairs.

The ACCL lost many of its longest-standing and more publicly prominent members during this period. Fitzpatrick emerged as unchallenged head of the Council. He could point to some successes in questioning the Victorian government’s attempts to increase film and literary censorship.

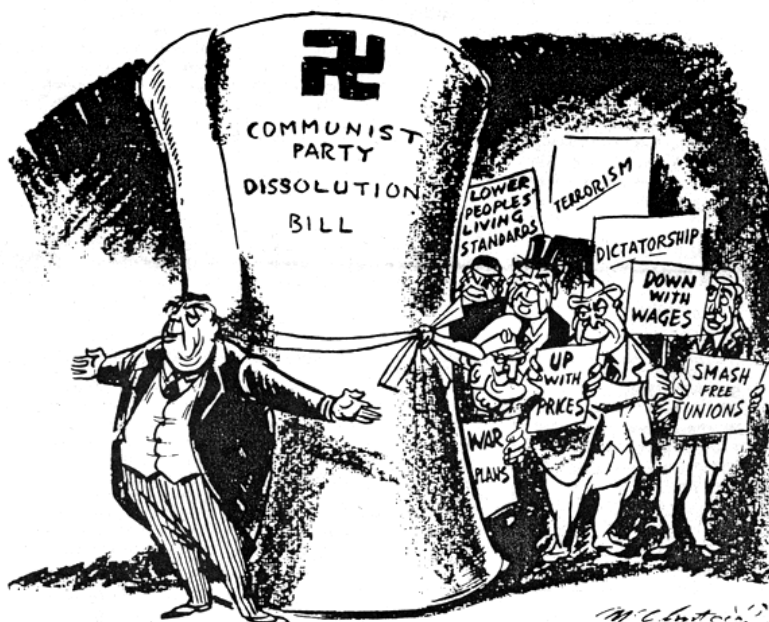
When Prime Minister Menzies indicated the government’s intention to ban the Communist Party, the Council issued a pamphlet objecting, based on the stance that existing criminal laws should deal with criminals.

Fitzpatrick was called before the Royal Commission, which was satisfied that neither the ACCL nor Fitzpatrick was communist-controlled, though both associated with communist causes.

In April 1950, Menzies introduced the Communist Party Dissolution Bill, under which the Attorney General could declare individuals or organisations to be Communist, have property confiscated, be excluded from employment and threatened with heavy jail sentences. The Council mobilised opposition with a pamphlet and publicity

²⁶ ibid p83

campaign. It argued that the Bill would not succeed in controlling subversive groups but would have detrimental effects on any dissidents and limit freedom of expression. Further, it gave the executive and police unprecedented powers. The campaign was directed at parliamentarians, and later the wider public. After High Court challenges, the issue was finally put to a referendum and narrowly rejected.



“The greatest threat to civil liberties since the war had only been averted by a High Court challenge in which the Council as an organisation was not involved, and then by a test of public will over which the Council conceded it had had no influence.”²⁷

The campaign left the Council weak in financial and leadership terms. Fitzpatrick started writing a history of civil liberties in Australia, publishing early chapters in the Council’s regular newsletter, *Civil Liberty*. He argued that power had become more centralised and civil society eroded. This had happened, he contended, because most people had no interest in defending civil liberties: consequently parliaments had been able to enact draconian legislation. He proposed that civil liberties should be regarded as rights – from freedom of expression to immunities from arbitrary official actions.

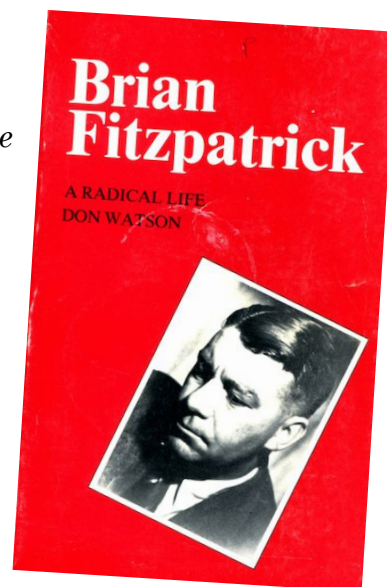
Fitzpatrick also worked for a reformed Australian Labor Party following the party split after the Petrov Royal Commission. He dealt with issues of civil liberties in his newsletter, *Brian Fitzpatrick’s Labor Newsletter*, such as scandals involving the security services and ASIO’s phone tapping. As the newsletter took up more time, so his attention to the Council was reduced. Executive Council meetings grew infrequent.

The Council’s final campaign, in 1960, was in opposition to amendments to the Crimes Act, specifically clauses against treason and official secrets which over-rode traditional rights. Fitzpatrick called a public meeting which set up a Citizens’ Committee Against the Crimes Bill. The government introduced a series of amendments, then used the parliamentary guillotine process to close debate and pass the legislation. In Fitzpatrick’s view, the Council could do little else now than help return a Labor government.

²⁷ *ibid* p97

“The polarised debate produced by the Cold War had undermined the efficacy of a neutral guardian, the role sought by the ACCL, and Fitzpatrick had adopted a partisan attitude”²⁸

Partisanship had reduced the Council’s influence further: ultimately, abandoning political neutrality had led Australia’s first group of civil libertarians down a dead end. The Council was moribund by the end of the 1950s, and existed only as a skeleton until Fitzpatrick’s death in 1965.



“It is not clear that Fitzpatrick blocked the Council’s resuscitation by a new generation: its stagnation had in fact begun many years earlier; and it had been only Fitzpatrick’s campaigning zeal that had sustained it at all. He devoted almost 30 years to the Council, for 25 of these he was its general secretary, involved in almost every campaign.”²⁹

The point was made by Gareth Evans (later federal Attorney-General but, at the time of the comment, a law lecturer at Melbourne University) that, during Fitzpatrick’s decline towards death, there was a gap without any formal organisation anywhere until, in 1963, the NSW Council for Civil Liberties (NSWCCL) formed in Sydney.³⁰

A new beginning

Shortly after Fitzpatrick’s death, in 1966, John Bennett (photo) and Beatrice Faust established the Victorian Council for Civil Liberties (VCCL), initially as an offshoot and ally of the NSWCCL, but firmly based on Victorian issues. The activists challenged old assumptions of established political parties from a New Left perspective. It had no ties with former Council members, and avoided political and religious affiliations.



This political neutrality allowed people other than Labor sympathisers to join. Most were lawyers. The question of legal aid was to the fore, as was police conduct, administrative reform, racial discrimination and abortion law. Concerns with freedom of speech, and rights of minorities were maintained, and

²⁸ *ibid* p109

²⁹ *ibid* p110

³⁰ G Evans, ‘Civil liberties in the next decade’, in *Civil Liberty* newsletter of the Victorian Council for Civil Liberties No 34 May 1976 p2. Evans was for many years vice-president of the council (now Liberty Victoria).

issues broadened to include rights of juvenile offenders, treatment of prisoners and all areas of discrimination.

“Whereas the ACCL had sought to improve institutions of democratic government so that the legislature would properly represent the interests of minorities, the VCCL looked for new mechanisms to restrain executive abuse and hold governments accountable for their actions.”³¹

The Council joined in protests against censorship by funding legal representations for court challenges. It also supported anti-Vietnam war protests, assisting those arrested. Though the Council’s actions were avowedly non-party political, disagreement arose between more conservative and radical members. Its founder, John Bennett, was expelled from the Labor Party after criticising the left-dominated State executive. He authored a booklet entitled *Freedom of Expression in Australia*, which covered citizens’ rights in relation to censorship in all media, and invasions of privacy.³²

An early flush took membership to a figure around 400. The executive changed as the group struggled to build a larger base, but it maintained political neutrality, focusing on generic areas of police powers and privacy. Its aim was to inform citizens of their rights and to improve police training and accountability. In focusing on police matters, the VCCL closely reflected the early attitude of its NSW counterpart, which had formed on the basis of reforming police behaviour (see NSW chapter).



In May 1970 a huge Moratorium March of about 100,000 people on the streets of Melbourne against the Vietnam War was accompanied by increased police powers to detain and arrest. By the time of the second Melbourne march, in September but this time of only about 50,000 people, police violence had escalated and there were more arrests. A third March in June 1971 in Melbourne saw the crowd rise to 100,000 again.³³

The VCCL’s position was that there should be proper resourcing of police, balanced by the individual’s right to

³¹ Waghorne op cit, p114

³² John Bennett *Freedom of Expression in Australia*, a Civil Liberties publication, February 1968

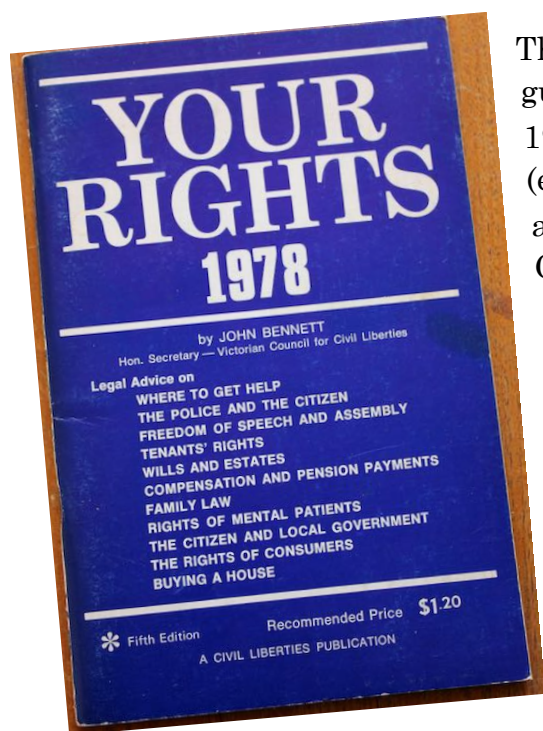
³³ https://en.wikipedia.org/wiki/Moratorium_to_End_the_War_in_Vietnam Marches were also held in other capitals.

bring charges against any who exceeded their powers. The VCCL also strongly advocated reforms at the main jail, Pentridge Prison.

Civil liberties groups around the nation welcomed the election of the Whitlam Labor government in 1972, expecting many reforms to. New Attorney-General Lionel Murphy undertook to recognise the rights of prisoners, students, illegitimate children and psychiatric patients, was committed to extension of legal aid funding, reform of censorship laws, and improved privacy laws. The proposals of the new Labor government in law reform and rights were far-reaching. Most significantly, Murphy promised to introduce a Bill of Rights.

The VCCL continued to concentrate on addressing state issues. However by 1974 there was a fall off in membership, exacerbated by division between pro- and anti-Labor factions. The election of the Fraser Liberal government in 1975 saw a retained commitment to multiculturalism, advancement of the status of women, abortion rights and Aboriginal rights...but the impetus to introduce a Rights Bill faltered, and the proposal was abandoned.

Reporting on activities in 1975, John Bennett's *Civil Liberty* newsletter outlined that the group provided speakers for other organisations, made submissions to the Law Reform Commission and the Beach Inquiry into Allegations against Members of the Victoria Police Force, and appeared in news interviews on television on a number of issues. The VCCL gave advice to an average of 50 individuals a week and opposed the establishing of an Australian Police Force.³⁴



The most successful venture of the VCCL was a small guidebook, *Your Rights*, which was first published in 1978. Large numbers continued to sell for many years (even when Bennett, who claimed ownership through authorship, had formed a new group, the Australian Civil Liberties Union – see later).

Commenting on Justice Hope's report on ASIO, the VCCL questioned why, as Hope found ASIO deficient in management and operation, he recommended extension of their powers.

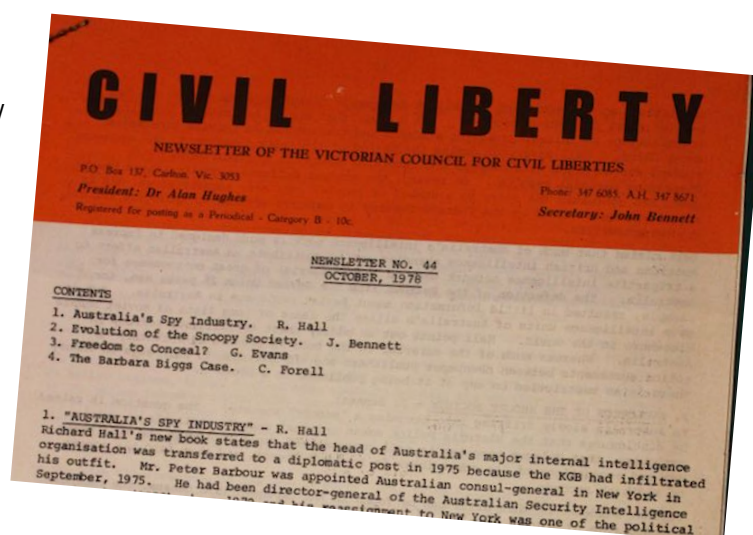
*“Any agency given greater powers to combat subversion and terrorism, should also be subject to more stringent controls”.*³⁵

³⁴ *Civil Liberty* No 32 , February 1976 p1

³⁵ *Civil Liberty* No 41, February 1978 p2

Civil Liberty newsletter No 44, dated October 1978, shows what was concerning the VCCL at the time...and indicates that not much changes over 40 years! The six-page, typed, foolscap newsletter featured coverage of spying in Australia, how the surveillance society was gathering pace, the deficiencies of proposed Freedom of Information legislation, and coverage of a dispute over a woman refusing to join a union, having been encouraged by federal Coalition legislation which was designed to break the control of unions.

While the names and dates might change, the same topics could easily provide the content of a Victorian and/or national newsletter 40 years later. The first article was 'Australia's Spy Industry' and was credited to R. Hall. In fact, it appears to be a review of Richard Hall's book, *'The Secret State: Australia's Spy Industry – Beyond public scrutiny'* which was published in 1978. The article was probably written by then-VCCL secretary John Bennett.



The article includes this gem:

*"Hall claims that much of Australia's intelligence work is more designed to impress American and British intelligence agencies and to contribute to a tripartite intelligence network than to learn material of great consequences to Australia....Hall points out an oddity about intelligence secrecy in Australia. Whereas much of the material in the book is covered by voluntary 'D' notice agreements between newspaper publishers and the government, Hall says in theory there is no restriction on any of it being published in a book."*³⁶

In 2018 of course, there are four agencies to impress under 'Five Eyes' (US, UK, Canada, NZ)...and restrictions on authors and journalists are such that you cannot even hint at what ASIO might be doing, or have done, for fear of five or 10 years in jail.

Bennett had a long piece about the "Australia slowly drifting into a 'snoopy' society".

"There is an inexorable drift towards more surveillance of citizens, and more efficient storage of information about individuals throughout computers, and

³⁶ Civil Liberty No 44, Oct 1978, p2

towards automatic exchange of information between agencies...the overall effect is to make our society less free...to inhibit individual creativeness and eccentricities and the free exchange of ideas in what is an already depressingly conformist society. ³⁷

He was critical of the expanding nature of the Census – and this was in 1978 – and that governments concentrated on the problem of drugs, ignoring the greater problem of alcohol over-use.

Gareth Evans railed at the six years it had taken a 1972 Whitlam initiative to flower as a fully-fledged Freedom of Information Bill before the federal parliament. In an article entitled “Freedom to Conceal”, he chose

“from quite a field of candidates just 10 defects which not even Blind Freddie at his most obdurate could overlook”. ³⁸

The author C. Forell wrote about the Barbara Biggs case, in which a tram conductor (conductress in 1978 parlance) was insisting on her right to work without joining a union under year-old Coalition legislation clearly entitling her to do so. Forell wrote:

“The present dispute was utterly predictable and indeed inevitable, given the Fraser Government’s addiction to high-handed legislation and the trade union movement’s traditional resistance to the rule of law in industrial affairs.” ³⁹

Soon after this edition of the newsletter, the VCCL became increasingly torn by schisms between pro- and anti-Labor philosophies. Bennett’s behaviour became erratic and he lost the confidence of the Council when he challenged the orthodox version of the Holocaust. Executive members were alarmed that he was making extremist pronouncements in the name of the VCCL.

A meeting held in May 1980 elected a new committee, and Bennett was removed as secretary. He refused to accept the validity of the meeting, so the Council was split in two, each claiming the name Victorian Council for Civil Liberties. Bennett would not relinquish control of the finances or membership list. Most of the new Council were lawyers (and there was a sprinkling of academics), so various legal conflicts ensued. Proceedings against Bennett began in September 1981 in the Victorian Supreme Court. Negotiations dragged on, with Bennett continuing to claim to represent VCCL. While skirmishes continued for several years, the new – but one could say, traditional – Council gradually gained ascendancy and legitimacy.

³⁷ *ibid*, p2

³⁸ *ibid*, p4

³⁹ *ibid*, p6

John Bennett in 1980 formed a new group, the Australian Civil Liberties Union, ACLU, mirroring the initials of the influential American CLU. In 2003, he was claiming via a website that 'Your Rights (2003)' was "the most commonly used layman's guide to law in Australia" and that more than 500,000 copies had been sold or given away since it was first published. In 2016, it appeared the ACLU web page was "last updated on 28 April 2004".

There was alarm interstate. The South Australian CCL reported:

"During 1979 the SACCL became greatly concerned at activities of John Bennett... in which he allied his own views as to the 'Zionist Conspiracy' with the Civil Liberties movement... We expressed our disquiet to the Victorian CCL during the latter part of 1979 and disassociated (sic) ourselves from those views in the Adelaide Press".⁴⁰

The Council had incurred debt from legal proceedings, and held two gala dinners in 1983 and 1984 with prominent speakers and guests, to raise funds and attract new members. In 1984, the Council incorporated. It adopted a conservative approach and restructured, with sub-committees on policies on criminal justice and minority rights. The Council applied for a grant for the salary of an administrator.⁴¹

A strategy of the new president, Ron Castan QC, of public campaigning engaged the media and gave publicity to Council's activities. Castan, a senior barrister, took a legalistic approach to civil liberties and was a "calm and effective advocate".⁴²

Right: Castan (left) as senior counsel, Eddie Mabo and Brian Keon-Cohen, junior counsel, on the famous Australian land rights case. Keon-Cohen was a longtime Council member, including a period as secretary of the organisation.

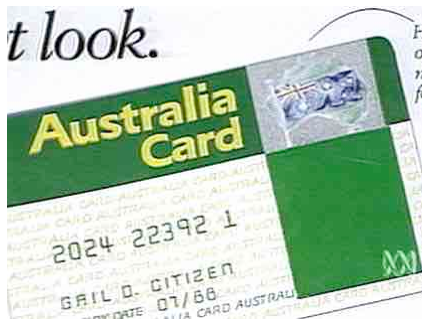


⁴⁰ *Civil Liberty* SACCL newsletter No 40 Sept-Oct 1980 p16

⁴¹ Waghorne, op cit p145

⁴² *ibid*, p146

In March 1983, a new Labor federal government, under Robert Hawke as PM and Gareth Evans as Attorney-General, took power. Evans had been closely involved in the VCCL, serving as vice-president for a number of years. At the University of Melbourne, where he taught in the Law faculty, one of his courses was on civil liberties. The Council in 1984 received, from Evans, a confidential draft of a Human Rights bill. The Council supported the bill but urged public discussion. A weakened version of the bill was passed by the House of Representatives but dropped in the face of Senate resistance. A subsequent 1988 referendum to enshrine rights in the Constitution was rejected by all states.



A 1985 issue which engaged all liberties, rights and freedoms groups in Australia – including the Council – was the Hawke government’s proposal to introduce a National Identity Card. Threats to privacy would be reduced by a Right to Privacy Act. The Australia Card was condemned by the Council which feared it would be employed for more intrusive purposes. The Opposition blocked the legislation in the Senate and the government called a double dissolution in September 1987. The

government won and put the bill to a joint sitting. The Liberals and Nationals joined the Democrats in opposing the bill, which was lost.

The push by governments to collect personal information in data bases was evident also in expansion of police powers, made possible by the establishment of the National Crime Authority. The VCCL publicly challenged these powers, and advocated non-violent policing, which recognised the rights to legal representation of those arrested. The stress on legal aspects brought an increase in lawyers, who tended to rely on close interpretation of the law rather than a philosophy of human rights. The Council’s barrister members provided pro bono assistance to unpopular but important cases.

Interestingly, in light of debates a decade later, the Council opposed the Australian Human Rights Commission’s moves to ban racial hatred on the grounds it would restrict freedom of speech and be ineffective, driving racism underground. The Council considered the money could be better spent in education programs, and that criminal acts should be dealt with by the criminal law.

The Council’s belief in educational processes was supported by a grant which enabled the employment of a project officer to develop teaching materials for secondary schools. The programs included consideration of ethical questions and the issues involved in protecting human rights. Funded by the Victorian Law Foundation and the Alan Missen Foundation, the program was supported by the Department of School Education and community-based agencies. Discussion papers were published on such

topics as racial vilification, access to the law, police powers, the right to privacy, Aboriginal people and the law, and free speech in Australian politics.⁴³

VCCL activities continued with written submissions on a wide range of topics, working subcommittees on police powers, prisons, health and industrial affairs. In addition, presenting radio programs and on-air discussion programs gave the Council an opportunity to comment on topical issues and to communicate to a wider general audience.⁴⁴

The election of a conservative state government in 1992 saw the introduction of greater police powers and tougher penalties for those convicted. It abolished the Victorian Law Reform Commission, and the Equal Opportunity Commissioner's role was downsized, reducing an individual's ability to object to government's actions. In line with economic rationalist belief in small government, increased use was made of commercial agents to handle government work. These contracts were designated 'commercial-in-confidence' and not open to public scrutiny, a problem which continues.

Probably as a result of the increasing incursions by government and lack of accountability, the Council launched a publicity campaign for a Bill of Rights in 1995, when a pamphlet was released in collaboration with Legal Aid Australia, entitled *Talking Rights: A Bill of Rights for Australia*. It argued that a consolidated statements of rights was essential. The next year, the Council launched a campaign to stop the Australia Card, an updated version of the National Identity Card proposed a decade earlier.

In 1995, the Council re-branded itself 'Liberty Victoria', in part to differentiate it from past internal divisions, and for media appeal. It is interesting that Liberty Victoria (LV) benefited from the drive of Joseph O'Reilly (photo), a non-lawyer who became executive director and commented on a wide range of issues. In 1990 LV rearranged its activities so the responsibility for public campaigns was taken by the president and administrative roles by the secretary. It sought salaried administrative staff. There was an alleged lack of diligence in the administration-reporting of HREOC grant funds deployment, however⁴⁵; O'Reilly worked for a time voluntarily for LV, then unsuccessfully contested the 1999 state election. Disagreements on the committee boiled over, with key positions changing.



⁴³ VCCL public awareness program, Report to VCCL AGM 16 Oct 1992, in papers of Laurie O'Sullivan ACTCCL president

⁴⁴ President and Secretary's report to AGM, in *Civil Liberty* newsletter Dec 1989, p9

⁴⁵ Waghorne, p171

In 1998 a new constitution strengthened LV organisational procedures, allowed for better handling and resolution of internal conflicts, and ensured the organisation would have fewer political associations. The focus was on upholding civil liberties through judicial processes: freedom of speech, conscience, association and movement. Privacy remained a key concern: the ability of government data bases to swap information without any accountability was viewed as a blatant invasion of privacy.

The main topic of LV was police use of dossiers, which mixed opinion and fact, and in which it was impossible to correct errors. There were problems with invasive surveillance technologies through CCTV. LV advised safeguards in their use and limits on their retention. Technological advances in genetics challenged such processes as the security of DNA evidence. LV advocated an independent facility to retest samples, with an overarching Bill of Rights to safeguard against abuse.

“Liberty Victoria formulated no general statement of policy on public surveillance: its practice was rather to apply legal principles to particular practices as they arose, and to brief journalists so that their concerns entered the news cycle.”⁴⁶

The al-Qaeda attacks in the USA on 11 September 2001 resulted in the passage of draconian legislation in Australia, known collectively and colloquially as the “terror laws”. With other civil liberties bodies, LV was – and remains – an outspoken critic, arguing that the threat of terrorism does not warrant the undermining of basic rights. Abiding by the long-standing principles of its antecedent body, it argued terrorist acts were already covered in the criminal code, and should be dealt with by crime laws.

The problem was that, as acts of terrorism were serious and unpredictable, it was argued that legislation had to be preventative. “Urgent” laws criminalised a wide range of activities, and reversed the burden of proof. Open judicial hearings were considered incompatible with security.

Asylum seekers rights was another new issue that LV, along with all other civil liberties and human rights organisations across the country, grappled with, in particular the contradiction between Australia’s obligations under international treaties and the government’s treatment of refugees. Appeals for adherence to international conventions would be countered by political claims that the needs of national security trumped other considerations.

The Tampa incident in 2001 saw SAS soldiers seize control of the Norwegian vessel and prevent it from landing with 438 asylum seekers on Christmas Island. There was outrage amongst LV members, who moved to lodge a legal claim. LV’s actions were vindicated when the Federal Court ruled that the government had acted unlawfully in

⁴⁶ ibid p175

detaining asylum seekers, and directed the government to allow the landing of the Tampa people on Christmas Island.

“The ruling gave Liberty Victoria powerful ammunition: an independent judicial decision had rejected the government’s logic.”⁴⁷

However the government appealed. The full bench of the Federal Court upheld the appeal, accepting the government’s right to restrict passage. The government appeared to challenge the very existence of judicial review, accusing the judges of being involved in the political process. It was a blatant confrontation between executive and judicial power.



Left: Chris Maxwell, appointed President of the Victorian Court of Appeal in 2005, was president of Liberty Victoria for two years during the refugee-Tampa period. He served six years on its board and was counter-sued by the Commonwealth of Australia – unsuccessfully – for costs as an LV board member after he appeared with a later-LV president, Julian Burnside, in the Tampa case.

The federal Coalition government’s confidence was boosted by its return to power for a fourth term in 2004, with control of the Senate. The election result appeared to endorse the government’s policies on terrorism and to indicate a harsh stand against asylum seekers had popular support.

“...to counter the apathy towards human rights and the dangers of excessive executive power, Liberty Victoria relaunched itself with public activity.”⁴⁸

Initiatives included film screenings, a large scale dinner and relaunch of the newsletter, *Liberty News*. LV was also very active on the cases of David Hicks and Mamdouh Habib, participating in a rally to condemn the US government and the Australian government’s complicity in mistreating of Australian citizens.

Liberty Victoria objected to the extension of police powers that were apparent in the 2004 Major Crime Commission (Investigative Powers) Bill against organised crime, which had enormous potential for abuse. In addition, the use of stun guns and semi-automatic weapons was extended, despite the high incidence of police shootings in Victoria. Parliaments were increasingly prone to scaremongering law-and-order campaigns.

⁴⁷ *ibid* p178

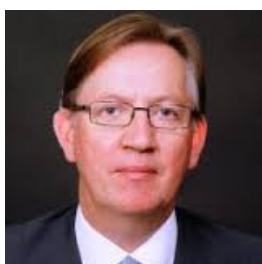
⁴⁸ *ibid* p182

*“Throughout this period Liberty Victoria had sought to promote the concept of independent judicial review.”*⁴⁹

The Melbourne legal community reacted to these threats to liberty by forming the Human Rights Legal Centre, which drew the support of Liberty Victoria, and the Public Interest Law Clearing House as well as stepping up the pro bono work of law firms. Human rights institutes were established at Melbourne and Monash universities. In the face of increasing government incursions in the name of security, there was a perceived need for mechanisms to defend rights.

Charters of Rights were supported by politicians with legal backgrounds. An ACT Labor administration, driven by Chief Minister Jon Stanhope (former president of the ACTCCL), passed a Human Rights Act in 2004, after extensive community consultation. The first in Australia, it was a statutory model, therefore subject to amendment and entailing a “dialogue” principle, under which courts could request a review of contentious legislation but final power resided with the parliament. The Act covered political and civil but not economic or social rights. LV favoured this model, and produced a strategy paper for Victoria. An extensive inquiry launched in 2005 recommended an Act along the lines of the ACT model.⁵⁰ It came into effect in 2006. (Moves for a national bill of rights in 2007 are covered in a later chapter).

An organisation’s vitality could be gauged at least in part – and before the internet – by the number of issues of its newsletter which it produced. LV’s output of *Liberty News* after 2002 was very patchy until the presidency of Michael Pearce in 2009, when there were six issues. The newsletter covered mainly opinion pieces on current topics, rather than hard news stories. There have been none published on the electronic website since 2011, as the website has taken over some of the old roles of the newsletter.⁵¹



Seemingly recognising the need for change in management, LV introduced a strategic review of its operations in February 2010. A sub-committee with Michael Pearce (President, photo left), Anne O’Rourke (Vice-President for 10 years, photo right), Evelyn Tadros



(committee member) and Alex Krummel (office

manager), assisted by consultants, produced a report. It identified the primary or core activity of Liberty Victoria as making submissions, both in writing and orally, to parliamentary and other public inquiries.

⁴⁹ *ibid* p190

⁵⁰ *ibid* p191

⁵¹ <http://libertyvictoria.org.au/node/29>

“This is the thing that Liberty does best and where it has most influence. Liberty’s ability to influence public debate largely derives from the seriousness with which its submissions are taken”.⁵²

The report also recommended a reorganisation of the structure to better define management and policy work. Collaboration with like-minded organisations was to be extended. Young Liberty for Law Reform (YLLR) was introduced as a new program.

In 2011, President Prof Spencer Zifcak (photo) reported that:

“Clearly, the issue that has dominated my first few weeks has been the defence of Wikileaks and its Director, Julian Assange. Liberty supports the disclosure of the Wikileaks cables as a global expression of freedom of speech. That support is conditional, of course, on ensuring that no one is harmed as a result of the documents’ release.”⁵³



In 2011, LV held four successful public events: The Alan Missen Oration, Voltaire Award Dinner, a fund raising film night and a public lecture on the role of the Association for Civil Rights in Israel.’ The 2011 report notes that LV has been active in making public statements, issuing media releases and lobbying government ministers on privacy, freedom of speech and religion. Under law and order issues, the organisation was vocal on mandatory sentencing, use of stun guns, and police management of people with mental illness, along with offshore processing of asylum seekers, the human rights ‘framework’. During the year, LV made 15 submissions to government and held seven public events.



The 2012 report of President Jane Dixon (photo) notes Liberty Victoria issued media releases and lobbied government ministers on privacy, and on freedom of speech and religion. Under the heading of law and order issues, LV made statements on mandatory sentencing, use of stun guns, and police management of people with mental illness. Offshore processing of asylum seekers, and the human rights ‘framework’, were topics of concern. LV made 18 submission to government, on topics covering anti-terrorism legislation, child abuse in institutions, national security, privacy, asylum seekers, and the Crimes Act.⁵⁴

⁵² <http://libertyvictoria.org.au/node/140>

⁵³ Liberty News issue 9 Autumn 2011 http://libertyvictoria.org.au/sites/default/files/LibertyNewsAutumn2011_0.pdf

⁵⁴ <http://libertyvictoria.org.au/sites/default/files/Presidents%20Report%20AGM%202012%20Final.pdf>

In privacy advocacy, nearly all the issues involve actions of the federal government. This again points to the need for a coordinated national civil liberties response, and pro-active approach to promoting privacy. Collaborations were actively sought with the NSW Council for Civil Liberties, the Queensland Council for Civil Liberties, as well as the Human Rights Centre, the Bar Association and the Law Institute. LV employed an office manager and a number of volunteers. Under a Human Rights and Discrimination heading, the president pointed to the threat to the Victorian Charter of Rights and Responsibilities, and delays in appointing staff to that body and to associated rights entities, such as the Australian Human Rights Commission, the Board of Equal Opportunity, the Freedom of Information, the Privacy and the Anti-Corruption Commissioners.⁵⁵

President Dixon's report 2014 stated:

*"Liberty has a broad canvas covering a wide range of policy objectives. We advocate widely on issues as diverse as reproductive rights, the right to die, spent convictions and the right to be forgotten, police accountability and anti-corruption, drones and surveillance, privacy and digital privacy, accountability for institutional abuse, innocence projects, defence against torture or capital punishment, Lesbian Gay Bisexual Transgender and Intersexed (LGBTI) equality, the right to a secular education, defence of asylum seekers, rule of law, freedom of speech and freedom to protest, freedom of religion, Charter protection and Human rights protection, Aboriginal advancement and Constitutional recognition."*⁵⁶

Details of these were reportedly in the innovative annual report bulletin, which was not publicly accessible.

LV welcomed a new president, barrister George Georgiou SC (photo) , in November 2014. Outgoing president Jane Dixon QC wrote:

"Liberty's role in advocating for civil liberties and justice is particularly important at the present time. George Georgiou is a passionate and dedicated lawyer who has always shown a willingness to look out for the underdog. He is fortunate to be taking over the helm of a strong and united organization which is uniquely placed to confront the many challenges ahead."



⁵⁵ ibid

⁵⁶ <http://libertyvictoria.org.au/President-report-2014>

Ms Dixon was Immediate Past President, while barrister Jessie Taylor was Senior Vice President. The Vice-Presidents were Jamie Gardiner, Thomas Kane and Michael Stanton.⁵⁷

Liberty Victoria's great strength over the past few decades has been the unwavering support of the Victorian bar, which has led to people of prominence – either at the time of their presidency, or by later appointments – heading the organisation. Presidents have included judges and barristers, Ron Merkel QC and Alan Goldberg AO QC, Ron Castan QC, Dr June Factor, Robert Richter QC, Dr Jude Wallace, Felicity Hampel SC, Chris Maxwell AC, Brian Walters QC, Julian Burnside AO QC, Michael Pearce SC, Professor Spencer Zifcak and judge Jane Dixon SC.⁵⁸ The presidential appointments indicate that Liberty Victoria is overwhelmingly a lawyer-based organisation: barristers in particular have been its core for decades, possibly as an industry reaction to the fact that the first two major players in Victorian civil liberties were an historian-journalist, Brian Fitzgerald, and a journalist, John Bennett.

In 2016 the management committee comprised four lawyers, three business people, two academics and three people with community background, supported by two executive staff. Eighty years after the founding of the first civil liberties group in the state, both the main players and the issues are vastly different in Victoria, and the organisation is expanding its contacts and networks to keep up with a rapidly-changing society. Cooperating with cultural groups, such as the Human Rights Arts and Film Festival, LV widened its activities and impact.

For example, *Fearless Music* brought together some of Melbourne's outstanding singers and musicians for a one-off show. The show aimed to support the rights Liberty Victoria says are being lost by Australians and especially by refugees. "Society is heavily burdened by the appalling offshore refugee prisons and laws that invade so many parts of people's private lives," then-Liberty Victoria President Georgiou said.⁵⁹ LV's annual Voltaire fundraising dinner in 2016 featured academic and media commentator and performer Waleed Aly as recipient of the Liberty Victoria Voltaire Award.

Liberty Victoria's innovative YLLR program – Young Liberty for Law Reform – operates over 12-months. It involves volunteer working groups of 4-6 people, supervised by volunteer human rights



⁵⁷ <http://libertyvictoria.org.au/President-report-2014>

⁵⁸ <http://libertyvictoria.org.au/history>

⁵⁹ <https://libertyvictoria.org.au/Fearless-music-concert>

advocates affiliated with LV. Each group focuses on a particular human right ‘theme’, such as criminal justice, discrimination law, and refugee and asylum seeker policy. Over the 12-month program, the groups produce advocacy and reform work directed towards decision-makers, or towards promoting dialogue and change at the community level. This work allows volunteers to contribute substantively to policy discourse and influence meaningful policy reform on systemic human rights issues.⁶⁰

The history of the Victorian civil liberties groups demonstrates that when civil liberties movements become too closely associated with political parties, they lose their credibility as an independent critic and their ability to be seen as non-political analysers of government policies and proposals. As belief in civil liberties is a philosophy which transcends party political boundaries, the groups which espouse it must be seen to be (and be) non-partisan, in order to gather the widest possible community support.

While Brian Fitzpatrick is sometimes eulogised as the doyen of civil liberties in Australia, his partisan political stance was detrimental to the long term cause of civil liberties in Victoria, as comes to light in the biography by author-historian-speechwriter Don Watson. Fitzgerald’s long reign, and to a lesser extent the length of influence of John Bennett, also indicates the danger of leaving people in key positions too long, a problem most civil liberties groups appear distinctly prone to, which needs to be guarded against in future.

Liberty Victoria and its antecedents have been an outstanding, shining light among existing liberties groups around Australia. But LV is yet to tackle the need, which applies to all such groups, to extend beyond the boundaries of the small, tight legal precinct cloistered closely around the court precinct within a state’s capital city, and engage ordinary citizens in the suburbs and towns and regions where they daily live the battle of retaining personal liberties and freedoms.

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⁶⁰ <https://libertyvictoria.org.au/yllr>