

‘It is Not the Beliefs but the Crime that Matters’: Post-War Civil Liberties Debates in Canada and Australia

Dominique Clément

In both Canada and Australia, a modern rights movement dedicated to the preservation of individual rights irrespective of creed, class, beliefs, race or ethnicity emerged in the 1930s. One of the central themes in the early years of both movements was the treatment of communists and organised labour amid concerns over state abuse of freedoms of speech, association and due process. The Australian Council for Civil Liberties and the Canadian Civil Liberties Union were founded in the 1930s to counter increasing tendencies of the state to suppress political rights, most often directed against the radical left. However, divisions within the political left, most notably between social democrats and communists, as well as weaknesses in the legal system created significant obstacles to the civil liberties movement in both countries. The following article explores the key themes in the early Australian and Canadian civil liberties movement by comparing two separate national social movements operating within a similar legal, political and social context. Debates over the Communist Party Dissolution Bill (1950) and subsequent referendum (1951) in Australia and the espionage commission (1946) in Canada represented high profile post-war debates on civil liberties issues in both countries, arising out of attempts by the federal government to suppress communism.

Within a week of Evdokia Petrov dying on 19 July 2002 in Australia, the defection of Igor Gouzenko was declared by Canadian Heritage Minister Sheila Copps as an event of ‘National Historic Significance’. The two events are linked across time and space by the defections of Evdokia and Vladimir Petrov (1955) in Australia and Igor and Svetlana Gouzenko (1945) in Canada, each having led to a federal royal commission to investigate the extent of Russian espionage in their respective countries. Following in the wake of each commission was a significant increase in the national security apparatus with a specific focus towards the purging of subversives within government service. In his obituary for Evdokia, David McKnight, one of the leading experts on the Australian Royal Commission on Espionage, characterised the events in Sydney in 1955 as a ‘dramatic episode in Australian politics that symbolized for many the meaning of the Cold War’.¹

The Gouzenko defection has often been regarded as the symbolic event beginning the Cold War in which anti-communist sentiment was to reach a climax in Australia in 1950 with an attempt to ban the Communist Party. One of the least explored impacts of state suppression of communism in the post-war period has been its effect on the domestic civil liberties movement.² In their respective zeal to undermine perceived threats to the state, the federal governments’ actions were responsible for initiating public debates on the vulnerability of individual rights in Canada and Australia. Two events in particular were fundamental in stimulating public debate. A royal commission instituted in Ottawa in 1946 employed extreme methods in investigating allegations of espionage, resulting in a bitterly divided parliament and media over the justification of suspending civil liberties to deal with a crisis situation. In Australia, the Menzies government attempted twice to suppress the Communist Party through legislation in 1950 and a referendum in 1951. A comparative framework between Canada and Australia will make it possible to discover some of the common and distinctive qualities of each country’s respective civil liberties movement, while at the

same time exploring one of the consequences which emerged as a result of state-repression of communism from the 1930s to the 1950s.

The Royal Commission on Espionage and the Canadian Civil Liberties Movement

The Winnipeg General Strike of 1919, a massive work stoppage laden with revolutionary and socialist rhetoric, encouraged the birth of radical post-war legislation with severe consequences for many Canadians.³ As will also be seen in the Australian case, the federal power over immigration was used to deport political radicals. Specifically, section 41 (enacted in June 1919) of the Immigration Act allowed officials to deport any alien or Canadian citizen not born in Canada for advocating the overthrow of the government by force. Trade unions and communists by the hundreds were deported through this legislation. In 1931-32 alone, deportations peaked at 7,034. With a population of 2,307,525 in 1931, 23 per cent of the population was in danger of being deported under the provisions of the Immigration Act.⁴

To complement the new immigration laws was one of the most draconian pieces of law ever passed in Canadian history. Section 98 of the Criminal Code was added following the strike and made Canada the world's only democracy banning the Communist Party. The legislation included the general provision that

Any association ... whose professed purpose ... is to bring about any governmental, industrial or economic change within Canada by use of force, violence or physical injury to person or property, or by threats of such injury, or which teaches, advocates, advises or defends the use of force, violence, terrorism, or physical injury to person or property ... in order to accomplish such change, or for any other purpose, or which shall by any means persecute or pursue such purpose ... or shall so teach, advocate, advise or defend, shall be an unlawful association.⁵

Section 98 characterised a member of an unlawful association as someone who had attended meetings, spoken out in favour or distributed literature for the organisation. Property belonging to the association could be seized by police without a warrant and forfeited to the Crown, and any person claiming to be a representative of the unlawful association was guilty by association. Three prosecutions emerged from Section 98 before its repeal in 1936, the most famous being the trial of eight members of the Communist Party of Canada in 1931. In *R v Buck* the Ontario Court of Appeal held that the provisions of Section 98 were broad enough to include members of the Communist Party of Canada (CPC) under the definition of unlawful association.⁶

The trial of the eight CPC leaders represented the high point of activity for the Canadian Labour Defence League, a communist-led organisation dedicated to the defence of individual rights. Members of the Canadian Labour Defence League (CLDL) raised \$160,000 in bail money for the accused, organised rallies and demonstrations, and put together a massive petition with over 459,000 signatures calling for the repeal of Section 98.⁷ The efforts of the CLDL were limited to defending 'only workers and those on the political left; it did not pretend to follow the dictum of making no distinctions about whose liberties it defended'.⁸ Its early work focused on efforts to remove Section 98 and stop deportations under the Immigration Act.

Section 98 was eventually repealed by the federal government, and replaced with a broader

sedition clause in the Criminal Code (as was the case in Australia with the War Reparations Act in 1920). In the province of Québec, the repeal of Section 98 was greeted with the passing of comparable provincial legislation. The Padlock Act (as it became known for the practice of closing down a building by placing a padlock on the front door) banned any use of a premises or the publication of material advocating communism. The legislation allowed the Attorney General to confiscate property and close down premises where advocates of communism were active. The broad scope of the legislation allowed it to be used against a variety of unpopular minority groups in the predominantly catholic French-speaking province, including Jehovah's Witnesses and Jewish groups.⁹

The Padlock Act, more than any other direct piece of legislation or event, was responsible for stimulating the creation of Canada's first civil liberties groups. While the Australian Council for Civil Liberties was being formed in Melbourne in the mid-1930s, the Canadian Civil Liberties Union was born in Montreal in 1937.¹⁰ The Canadian Civil Liberties Union (CCLU) was never anything more than a collection of autonomous local organisations rooted in Canada's major metropolitan areas. The Montreal branch of the CCLU was formed in 1938 and was soon followed by similar groups in Toronto and Vancouver, all advocating the repeal of the Padlock Act. Additional branches of the CCLU were formed in Ottawa and Winnipeg in 1938-39. A large protest delegation led by the Toronto branch and claiming to represent over two hundred organisations with more than 100,000 members arrived in Ottawa in June 1938 demanding the federal government disallow the legislation. The federal Minister of Justice, Ernest Lapointe (a senior cabinet minister from Quebec where the ruling Liberals had a power base of voters) refused and the Padlock Act was allowed to continue operating.¹¹

Each branch of the CCLU had a short life span with the exception of the Toronto group, later renamed the Civil Liberties Association of Toronto (CLAT) during the war. An attempt to form a national coalition of civil liberties groups was initiated by the Montreal branch (MCCLU) in 1940, but accusations of communist infiltration within the MCCLU defeated the attempt.¹² World War II and the Defence of Canada Regulations led to some reaction within the Canadian civil liberties movement. The CLAT successfully organised a massive rally of 5,000 people on 17 July 1942 with Arthur Roebuck, a prominent Liberal senator, and Arthur Garfield Hays of the American Civil Liberties Union, in attendance. The purpose of the rally was to demand a repeal of the ban on the Communist Party of Canada. Another rally held on 10 February 1943 organised by the CLAT attracted over 1,900 people calling for the restoration of another banned organisation, the Ukrainian Labour Farmer Temple Association.¹³ There were further ties in some cases to the federal Co-Operative Commonwealth Federation. Frank Scott was a member of the MCCLU before its demise in 1941 and had been an active member of the Co-Operative Commonwealth Federation (CCF) and its intellectual 'brain-trust', the League for Social Reconstruction.¹⁴

Cooperation between communists and social democrats within civil liberties associations was nonetheless a rare occurrence in Canada. In fact, divisions between communist and social democrats was a key theme in the early Canadian civil liberties movement. Despite the existence of communists and social democrats within these organisations, the Left was never able to work together on a national scale to promote greater legal protections for individual rights. While CCFers viewed

themselves as honest defenders of civil liberties who were generally appalled by the prosecution of the communists, they nevertheless were deeply suspicious of

all communist activity ... officially the founding fathers of the CCF decided to have nothing to do with the CPC or any of its front organisations such as the CLDL.¹⁵

Equally, by the World War II the CPC 'saw the CCF as their historic foe and rival for the leadership of the working-class'.¹⁶

Beginning with the CLDL and the CCLU, the civil liberties movement had been a movement of the Left, and it was thus inevitable the movement would be strongly affected by these larger divisions. Liberal and social democrats were driven out of the Montreal branch of the CCLU in 1940-41; the Civil Liberties Association of Winnipeg refused to allow communists to join its ranks; conflicts between communists and social democrats heated up in the ranks of the Civil Liberties Association of Toronto when the former attempted to take control of executive; and the Vancouver branch of the CCLU was led by a dedicated social democrat, Garnette G. Sedgewick, an English professor at the University of British Columbia.¹⁷

Only the CLAT and the Vancouver branch of the CCLU survived the war. A new group was formed during the war, the Civil Liberties Association of Winnipeg, with the prominent University of Manitoba (now University of Winnipeg) history professor Arthur Lower among its membership. It was therefore a relatively young movement which greeted the Royal Commission on Espionage in 1946.

The defection of Igor Gouzenko on 5 September 1945 had major repercussions within and outside Canada, and has often been credited as the symbolic event which initiated the Cold War. Gouzenko, a cipher clerk in the Russian embassy, stole documents revealing the existence of a Russian-led spy ring in Canada. The Royal Canadian Mounted Police (RCMP) interrogated Gouzenko for several months while keeping the defection a secret, until evidence of the defection leaked out in early February 1946. How Drew Pearson, a popular American radio personality, received the information is in itself a question of much debate. Some suspect the information was leaked by the American government, either the White House or J. Edgar Hoover at the Federal Bureau of Investigation, which were both aware of the defection having been briefed by Mackenzie King, in order to pressure Canada to act after months of stalling.¹⁸ Whatever the basis for the leak, the government did not wait long to act. King and his cabinet decided to form a Royal Commission to hold an *in camera* investigation into Gouzenko's allegations, led by two Supreme Court of Canada justices, Roy Lindsay Kellock and Robert Taschereau.

The extreme tactics employed by the commission overshadowed any comparable investigation during the war. Although the war had ended in September 1945 and the War Measures Act was rescinded in December 1945, the commission operated under war-time powers. Following Gouzenko's defection in September, the Prime Minister, in consultation with three members of his cabinet, passed order-in-council PC6444 authorizing the Minister of Justice to detain persons for the purpose of investigating allegations of espionage. The order suspended *habeas corpus* and allowed the government to detain people without recourse to the courts or having to justify the detention.¹⁹ PC6444 was not the only order-in-council to continue operating under war-time powers in 1946. Similar orders issued for the repatriation of Japanese Canadians were also passed under the War Measures Act but, unlike PC6444, they were announced in Parliament and not kept secret. When Minister of Justice Louis St. Laurent was later accused of lying to Parliament when he declared in January 1946 (following the rescinding of the deportation orders) that no orders-in-council were still

in operation, the Minister claimed to have forgotten about PC6444.²⁰

The detention powers of PC6444 under the War Measures Act were combined with the powers of the Inquiries Act and the Official Secrets Act.²¹ Investigations carried out under the Inquiries Act allowed commissioners to force people to provide testimony under oath; those who refused could be charged with contempt of court and gaoled for up to six months. It was left to the commissioners' discretion to decide if the witness should be allowed access to legal counsel. Finally, the commission was mandated to investigate whether Canadian citizens had violated the Official Secrets Act by passing on confidential government information to an enemy power. Not only were the provisions for guilt under the Official Secrets Act extremely vague, but the legislation reversed the onus of proof and required the accused to demonstrate their innocence.

This motley collection of legislative weapons was a powerful tool in enabling two Supreme Court justices to effectively circumvent the judicial system. Thirteen detainees were held incommunicado, without access to lawyers or family, at the RCMP Rockcliffe Barracks in Ottawa. Some were held for up to five weeks. The conditions of their detention were designed to encourage cooperation with the authorities. They were held under 24-hour suicide watch with an RCMP guard in their cells at all times, and each suspect was interrogated by an RCMP agent before being brought before the commission (no stenographer was allowed to be present during these interrogations).²² When brought before the commission, suspects were threatened with prison time if they did not discuss the crimes they were accused of committing. In a letter to the Minister of Justice, Louis St. Laurent, one of the detainees claimed that

if I am to judge by the treatment accorded to me yesterday afternoon before your Royal Commission, I can only come to the conclusion that, as a Canadian citizen, I have been completely stripped of all my rights before the law.²³

Using a royal commission imbued with extraordinary powers allowed the justices to circumvent traditional due process rights, including *habeas corpus* and access to legal counsel. It was clearly the government's intent to use the commission in this fashion. A secret memorandum from E.K. Williams, president of the Canadian Bar Association and lead counsel for the commission, warned in December 1945 that 'criminal proceedings at this stage are not advisable. No prosecution with the evidence now available could succeed except one of Back, Badeau, Nora, and Grey'.²⁴ He believed the state would be unable to convict the suspected spies if the government proceeded with a police investigation. Williams recommended a royal commission because

it need not be bound by the ordinary rules of evidence if it considers it desirable to disregard them. It need not permit counsel to appear for those to be interrogated by or before it.²⁵

The issue which truly raised the ire of many civil libertarians, however, was the decision to use the commission's transcripts in court. The transcripts, containing testimony gained under duress, allowed the Crown to put to trial several suspects for conspiracy to violate the Official Secrets Act. Under the Canada Evidence Act, individuals suspected of a crime have the right to ask a judge to provide them with immunity from self-incrimination before testifying. By using their discretion to deny suspects access in counsel, Taschereau and Kellock virtually guaranteed the detainees, none of whom were lawyers, would claim protection under the legislation. By the time the final 'spy trial' was

completed on 9 April 1949, six people had been convicted for conspiracy due largely to testimony by Gouzenko and their own words before the commission. Others found themselves unemployed or had their reputation tarnished when the commission released its report on 27 June 1946 accusing 16 people (including one already acquitted in court) for violating the Official Secrets Act.

In parliament, debates on the commission commenced in March 1946 when the House began sitting, and continued throughout 1947 as individuals were brought to trial. John Diefenbaker, future leader of the Conservative Party and advocate of a Canadian Bill of Rights, led the chorus of attacks against the commission. He demanded an amendment to the Inquiries Act guaranteeing witnesses access to counsel and a removal of the reversed onus of proof clause in the Official Secrets Act.²⁶ Taking advantage of committee meetings on the proposed Citizenship Act, Diefenbaker attempted to pass a motion to include in the legislation a short Bill of Rights to protect due process, freedoms of religion, speech and assembly, as well as entrenching habeas corpus.²⁷ His colleague in the Conservative Party, Davie Fulton (future Minister of Justice), suggested that the

government, emboldened by its apparent success with each succeeding breach in the front of constitutional freedoms, indulging in the defence which it has made of its action in thus gorging itself with power.²⁸

The other major opposition party in the parliament, the Co-Operative Commonwealth Federation, was ideologically the polar opposite of the conservatives but voiced similar concerns about the commission. Alistair Stewart, who first raised the possibility of a Canadian Bill of Rights in a failed motion in 1945, objected to ‘the interference with the citizen by the executive, without parliament knowing anything about the matter’.²⁹ M.J. Coldwell, leader of the CCF, echoed Diefenbaker’s call for a Bill of Rights during the committee hearings on the citizenship legislation.³⁰ Stanley Knowles, a member of the Manitoba Civil Liberties Association (MCLA), joined his colleagues in calling for a Bill of Rights, and read a letter of protest from the MCLA before Parliament.³¹ Only the leader of the Social Credit Party openly supported the government’s actions and dismissed concerns over civil liberties abuses.³²

Louis St. Laurent and J.L. Ilsley (replacing St. Laurent as Minister of Justice in 1947) led the Liberals’ defence. They employed the same arguments Menzies and his allies would use to defend the dissolution bill and referendum. The Liberal’s arguments centred around the need to deal with a crisis and the principle of Parliamentary supremacy to justify their actions. St. Laurent accused Diefenbaker and others of trying to mount a campaign of hysteria against the government, and defended his actions as legal and within the powers and procedures of Parliament during a time in which the administration of the nation was threatened.³³ Using the language of Parliamentary supremacy, he contended that

those principles resulting from Magna Carta, from the Petition of Rights, the Bill of Settlement and Habeas Corpus Act, are great and glorious privileges; but they are privileges which can be and which unfortunately sometimes have to be interfered with by the actions of Parliament or actions under the authority of Parliament.³⁴

Ilsley favoured the continued onus of proof provisions in the Official Secrets Act because the methods employed by spies were

developed so as to capitalize, to the full, the presumption of innocence, necessity of proof beyond reasonable doubt, necessity of corroboration and all the other rules which have been worked out through the centuries as safeguards of liberties by court and legislators who had in mind crimes very different from the kind of crimes spies commit.³⁵

Political divisions caused by the espionage commission were rooted in both ideological division and attitudes towards the nature of the threat raised by communists. Correspondence between John Diefenbaker and George Drew highlight the nature of these latter divisions. Drew was the anti-communist Premier of Ontario from 1943 to 1948 who used a special branch of the Ontario Provincial Police to spy on the CCF and trade unions.³⁶ During the proceedings of the commission as concerns were raised in Parliament about the treatment of suspects, Drew wrote to Diefenbaker in March expressing his views on the subject:

I can hardly tell you how strongly I feel that it is absolutely necessary for our party to go full out in regard to the threat of communism, both from the domestic and international point of view and to be critical of the government for its carelessness in dealing with so serious a situation.

Diefenbaker's handwriting on the letter itself noted the following: 'On the other hand, I do not think they should have been denied the normal protection of our laws'.³⁷ Irrespective of their shared partisan affiliation, Diefenbaker clearly did not share Drew's enthusiasm for disregarding the rule of law when it came to communism. Drew would later ascend to the leadership of the federal party in 1948 (when the Tories were the Official Opposition) and consistently encouraged red-baiting and fears of communist infiltration in the government until he was replaced by Diefenbaker who went on to become Prime Minister in 1957 and father of the Canadian Bill of Rights in 1960.

Political debates reflected similar splits within the popular media. Between 16 February 1946 and 16 April 1946, press coverage of the commission and the spy trials was extensive. An analysis of six English language newspapers finds each paper carrying a story on the commission almost every day between 16 February and 16 April.³⁸ A significant percentage of these stories appeared on the front page of the newspaper (on average, 36 out of 47 newspapers printed during this time period featured a headline on the espionage affair). The issue of the suspects' civil liberties was a common theme, particularly after 2 March 1946 when the commission released its first interim report. Articles included interviews by family members attempting to contact the suspects interned in the Rockcliffe barracks, statements by lawyers who could not speak with their clients, and failed attempts by relatives of Matt Nightingale and Fred Poland to ask the courts to provide writs of *habeas corpus* to force the commission to release its detainees.³⁹

As will be seen ahead, the Australian media was generally united in its support for anti-communist measures in the form of the Communist Party Dissolution bill whereas the Canadian media was bitterly divided on whether or not the crisis justified the commission's tactics. In Canada in 1946 the Cold War was only beginning and it had yet to take on the ferocity of the 1950s when anti-communist measures were increasingly popular. The editor of the *Winnipeg Free Press*, George Ferguson, conceded the existence of a threat to the state while condemning the government's unnecessary tactics.⁴⁰ A piece carried in the *Vancouver Sun* by Harold Pritchett, an active member

of the CCF, reflected on PC6444 as a 'greater potential source of evil than its creators likely considered'.⁴¹ The *Globe and Mail* reacted to the first interim report with an editorial arguing that

all rules of freedom, the basic liberties of the individual, must, we all know, be subordinate on occasion to the safety of the state. But there is nothing in the acceptance of this which licenses the Government to suspend all the judicial safeguards in order to facilitate police work or make easier the conduct of an official inquiry.⁴²

In contrast, the *Montreal Gazette* and the *Halifax Herald* offered the government their full support.⁴³ The latter was particularly virulent against other members of the press, printing 13 editorials between February and April 1946 criticizing the media for not supporting the government.⁴⁴ Surprisingly, the French language press provided little coverage of the espionage commission. *Le Devoir* carried only 15 articles covering the event during a period in which they printed 47 papers, and it was a virtual non-issue for *Action Catholique*.

As the debate raged in the press and Parliament, the forum expanded to include the courts as most of the accused spies were tried for conspiracy to violate the Official Secrets Act. Several defendants attempted to challenge the legality of their confessions before the commission. In *Raymond Boyer v the King*, the Québec appeals court ruled that the

appellant did not object to the questions put to him by the Royal Commission, and consequently the replies that he gave to the question put to him in the course of the inquiry could be pleaded and were admissible as evidence against him at trial.⁴⁵

Attempts to have the judiciary consider the constitutionality of the commission and its tactics were rebuffed. In one of the earliest decisions on the admissibility of evidence, James McRuer of the Ontario High Court did not believe it was

at all clear that this court has, in these proceedings, any jurisdiction to review the conduct of the commission or to decide that a commission acting with apparent lawful jurisdiction has at any time by its conduct deprived itself of jurisdiction.⁴⁶

His ruling effectively distanced the judiciary from ruling on the legitimacy of an order, operating in peacetime, responsible for violating a host of fundamental due process rights. Without any statutory or constitutional powers in the form of a Bill of Rights, the judiciary was in no position to challenge an order of the federal government, even one offensive to traditional freedoms.

Members of the legal profession were generally divided over the issue. At the 1946 meeting of the Canadian Bar Association, several members called for a motion to condemn the government's actions. The Association found itself in a difficult position; not only were several members hesitant to criticise two sitting judges of the Supreme Court of Canada, but its own president was the lead counsel for the espionage commission. Unwilling to openly criticise the commission, the association passed a motion calling on the government to avoid the use of judges in future royal commissions. R.W.M. Chitty, a Toronto lawyer and chair of the temporary civil liberties committee created during the war, had failed to convince the association to take a harsher stance; but the end result of the 1946 meeting was the creation of a permanent civil liberties sub-committee in the Canadian Bar

Association.⁴⁷

The Canadian espionage commission was to have a significant impact on the civil liberties movement beyond simply stimulating a major public debate. In 1947, 1948 and 1950 the federal government formed committees of the House and Senate to investigate the possibility of entrenching a Bill of Rights in the constitution. It is clear the Liberal government had little interest in a Bill of Rights, and the first committee in 1947 was likely an attempt to dispel accusations that the government was not serious about protecting fundamental freedoms. The bill was introduced by Ian MacKenzie, Minister of Veteran Affairs, who had supported the King government's decision during the war to relocate Japanese Canadians from the entire West coast. In his speech introducing the bill, MacKenzie contended that

many of the rights and privileges which we prize highly we do not owe to specific statutes ... it is much more important that we should think and talk about freedom than that we should pass legislation in regard to it.⁴⁸

Two new civil liberties groups were formed in direct reaction to the espionage commission. The Ottawa Civil Liberties Association (OCLA) emerged in 1946 with the support of such notable figures as Liberal Senator Arthur Roebuck and Canada's first female Senator, Carine Wilson, both liberals with leftist leanings. Originally the group hoped to incorporate both social democrats and communists, but it soon became apparent the group suffered from significant internal divisions and contests over leadership.⁴⁹ Another group was formed in Toronto, named the Emergency Committee for Civil Rights (ECCR). The ECCR had broken away from the other Toronto group, the CLAT, reflecting once again the political divisions plaguing the Left. Members of the ECCR included C.S. Jackson, a communist and leader of the United Electrical Workers. Another organisation, the Montreal Civil Liberties Association led by Frank Scott, also emerged around the same time.⁵⁰ A total of six associations from Vancouver to Montreal were active in the defence of civil liberties in 1946.

Except for the Vancouver branch of the CCLU, each group was active in bringing the government to task for circumventing the judicial process. Advertisements were placed in the *Montreal Star* and the *Toronto Star*, two of Canada's leading papers, condemning PC6444 and the use of war-time powers.⁵¹ Motions were passed by the Ottawa and Winnipeg groups followed by letters to the Minister of Justice demanding an end to the distribution of the commission's report. They criticised the government for distributing a report containing accusations of guilt and, in doing so, legitimizing in the public mind a stigma of guilt not proven in court.⁵² B.K. Sandwell of the CLAT attacked the commission in the popular magazine he edited, *Saturday Night*, while Arthur Lower of the MCLA expressed similar concerns in the pages of the *Winnipeg Free Press*.⁵³ As mentioned earlier, several groups had their literature quoted before Parliament by Diefenbaker of the Conservative Party and Stewart of the CCF. The most active groups were unquestionably the OCLA and the ECCR. Both produced detailed reports on the commission's various abuses.⁵⁴ Each report covered the activities of the commission and the conditions of the suspects' imprisonment with impressive detail for a pair of reports produced so quickly after the release of the commission's final report.

In the same year an attempt was made at a conference in Ottawa to form a national association, an event which Frank Clarke characterised as a 'rancorous affair'.⁵⁵ Once again the

central issue was ideological. C.S. Jackson of the ECCR called for a broad based organisation to include unions while J.P. Erichsen-Brown of the OCLA rejected the idea of a communist being a legitimate civil libertarian. The conference broke down and no consensus was reached. The Vancouver branch of the CCLU was barely active during the espionage affair, and by 1950 all but the two Toronto groups were still active.⁵⁶ Each changed their name, with the CLAT becoming the Association for Civil Liberties and the ECCR becoming the League for Democratic Rights (LDR). Both had pretensions of becoming a national civil liberties association, but neither succeeded. By the mid-1950s neither group was active and existed in name only. For all intents and purposes, the Canadian rights movements had become defunct.

The ACCL and the Dissolution of the Communist Party of Australia

The story of the Australian Council for Civil Liberties (ACCL), the country's dominant civil liberties group until the 1960s, begins with Brian Fitzpatrick. Fitzpatrick was only one of several of the ACCL's founding members but would soon come to dominate the organisation. One of the most influential historians in Australia, Fitzpatrick was a Marxist but never joined the Communist Party of Australia (CPA).⁵⁷ Soon after the ACCL was formed, Fitzpatrick became the group's General Secretary and through hard work and diligence came to direct most of the organisation's activities.

The ACCL was founded in Melbourne in late 1935 from a group of individuals active in the Book Censorship Abolition League, a group formed a few years earlier to combat government regulations censoring distribution of predominantly leftist literature in Australia. Unlike the Canadian CCLU with branches across the nation, the ACCL was the country's only civil liberties group in the 1930s. The group's first president was Herbert Burton, a senior lecturer in economic history at the University of Melbourne.⁵⁸ Fitzpatrick's biographer, Don Watson, describes the group as

an instrument of resistance guided by circumstances more than ideology. The social theories of its various supporters, which ranged from the liberal left to the radical right, and sometime to the eccentric, were subjugated by consensus on immediate imperatives.⁵⁹

In practice, the ACCL had much stronger ties with the political Left than the Right and had a distinct bias towards the Australian Labor Party (ALP). In a letter to Prime Minister Curtin soon after his election success, Fitzpatrick assured him the

policy of my Council, agreed to by our officers all over Australia without dissent, that we refrain in these difficult times from embarrassing your Government with representations for changes in the law – except in circumstances of a most special kind.⁶⁰

It was not simply the exigencies of war tempering the council's attacks on the state. Don Watson has suggested that it 'became the unwritten policy of the ACCL to avoid embarrassing the Labor government, to treat it manifestly preferable to the conservative alternative'.⁶¹

The membership of the ACCL reflected its political leanings. Maurice Blackburn, Eddie Ward, Frank Brennan and R.T. Pollard were all sitting members of the ALP in Parliament and continued to be active in the ACCL after the ALP took power federally in 1941. Lawyers, professors,

journalists and other middle class professionals formed the Council's Board of Directors. The ACCL also received a great deal of support from organised labour, in the form of donations, literature sales and organisational membership fees. In 1938, the Council registered approximately 57 members in total and 10 affiliated groups; in 1941, those numbers had soared to more than 500 members and 70 affiliated societies, the vast majority of which were unions.⁶² It was unquestionably larger than any comparable civil liberties association in Canada. Soon after the ALP was elected in 1941, ACCL member J.V. Barry was appointed to the Aliens Advisory Committee and later the Regulations Advisory Committee, Fitzpatrick and Sawyer to a group of 20 in connection with the Constitution Alteration (War Aims and Reconstruction) Bill (later defeated in a national referendum), and William Slater was appointed the first ambassador to the Soviet Union.⁶³ Several state secretaries of the ACCL were communists but, with regards to the core group of the ACCL in Melbourne, members clearly favoured the ALP in its political leanings.

The Crimes Act was the first major issue confronted by the ACCL. Criminal law was constitutionally assigned to the States, but the Commonwealth could assign criminal sanctions to areas within its field of power. Through a series of amendments to the Crimes Act and other legislation in 1920, 1925, 1926 and 1935, the federal government maintained its repression of radicals, particularly communists.⁶⁴ As was the case in Canada, the post-World War I period witnesses the rise of radical new legislation to deport, imprison and ban individuals or literature of political radicals. The 1920 War Precautions Act Repeal Bill allowed sedition to be tried as a summary offence instead of an indictable offence (requiring trial by jury) if elected by the accused. As was the case in Canada, an amendment to the Immigration Act during the 1925 seaman's strike empowered the Governor General to call upon non-citizens considered a threat to the peace, order and good government of Australia to justify why they should not be deported. The legislation was used against the Seamen Union's leaders, Tom Walsh and Jacob Johnson, until a High Court case litigated by H.V. Evatt (Australia Labour Party member in the legislature of New South Wales and future leader of the federal ALP) defeated the law. The strike also led to a piece of legislation called the Transport Workers Act requiring wharfies to be licensed. Officials provided licenses but were now in a position to refuse licenses and throw wharfies out of work if they threatened to strike. Following the failure of the Immigration Act to deport Walsh and Johnson, the Lyons government (Nationalist) reproduced the Unlawful Associations Act in 1926 with a series of amendments to the Crimes Act designed to deal with seditious organisations. Guilty verdicts allowed up to seven years of imprisonment for leaders of seditious groups, deportation for non-citizens, prosecutions for conspiracy without trial by jury, and a reversal of the onus of proof by requiring the accused to demonstrate their innocence following an accusation of guilt by the Governor General.⁶⁵ The new legislation has been characterised by Don Watson as

remarkable for the contrast between the savagery of its provisions and the infrequency and inefficacy of its application. A 'serious industrial disturbance', for instance, was not proclaimed until 23 March 1950. Without exception, its major prosecutions had failed at the hands of the High Court.⁶⁶

The ACCL spent its early years attacking these amendments. With organised labour as the target of many of these repressive measures, it is understandable how Fitzpatrick was able to recruit so many supporters among unions. ACCL publications were purchased and distributed by unions,

and there was close cooperation with the Australian Council of Trade Unions (ACTU) and the Melbourne Trades Hall.⁶⁷ Another target for persecution was the CPA and the Friends of the Soviet Union, both organisations having been threatened by the federal government with prosecution for sedition which the ACCL consistently opposed as part of its general distaste for the provisions of the Crimes Act.⁶⁸ In the end, threatened prosecutions against the CPA and Friends of the Soviet Union under the amended Crimes Act never materialised. According to Watson, the ACCL's

work almost certainly played a part in Menzies' announcement, on 30 September 1937, that prosecutions against the CPA and the Friends of the Soviet Union would not be continued, and that the Act would be reviewed. In the election campaign of that year he and Lyons promised reform of the Act.⁶⁹

Two years later, a Refugee Immigration Conference was convened by the ACCL leading to the formation of a Victorian International Refugee Emergency Council to provide free legal aid, make representations to the Department of the Interior, and provide advice to immigrants threatened with deportation. The refugee council was successful in preventing several deportations.

World War II raised serious civil liberties concerns, particularly in the exercise of the National Security Regulations. The ACCL, with its close ties with the government in power, solid foundations of funding support and active membership from organised labour was far more active during the war than its Canadian counterparts which were mostly small volunteer groups with little or no funding. It is, however, beyond the context of this work to examine every aspect of civil liberties abuse and public reaction throughout the war. From the perspective of the ACCL, the most offensive aspects of the National Security Regulations were Regulations 26, 42 and 51. Each regulation, in one form or another, allowed the government to intern people if they threatened the war effort. The regulations further allowed for the suspension of *habeas corpus*, thus insulating decisions from judicial review. The issue became a major public debate following the internments of Horace Ratcliff and Max Thomas in 1941 who both went on a hunger strike to challenge their internment. The ACCL held a rally in conjunction with the Australian Tramway and Motor Omnibus Employees Association to raise funds for the Civil Rights Defence League (a group created to release the two men). Rounds of protests by various unions across the country and the efforts of the NSW Trades and Labour Council finally gained their release, while a High Court challenge coordinated by J.V. Barry (ACCL Vice President) under Frank Rowan led to an amendment of Regulation 42. Regulation 42 (A) was eventually disallowed by the slim margin of one vote in parliament, including the votes of ACCL members Ward and Pollard.⁷⁰ According to historian Robin Gollan, the ACCL was the most effective organisation before and during the war in bringing the government to task for its civil liberties abuses.⁷¹

Successes were mitigated only by the ideological divisions within the organisation. As the only viable civil liberties organisation in Australia, the ACCL was an attempt to unite social democrats, left liberals and communists within one organisation. A report from the Commonwealth Investigation Branch (working for the Attorney General) in 1939 confirmed Fitzpatrick as the real leader of the Council while claiming the existence of a communist cell in the ACCL through its members G.L. Morris and Dr. Lugg.⁷² Attitudes towards the war were in some ways similar between communists and social democrats. Communists had come out strongly against the war in its early years as an exercise in imperialism. Although others on the Left and within the ALP, as well as many

social democrats within the ACCL, supported the war, they were not uncritical of the government's handling of the war effort. In 1940, as president of the ACCL and their official Parliamentary spokesperson, Maurice Blackburn consistently challenged the Menzies government's policies of censorship, suppression of the communist press and Regulation 42 (A) limiting freedom of speech by illegal organisations during the war.⁷³ The situation changed dramatically in 1941-42. Under Curtin the ALP came to power federally and members of the ALP in the ACCL were undoubtedly much less likely to be critical of the government, particularly as the Pacific war expanded to threaten Australia itself. Simultaneously, with Hitler's attack on Russia, the communist line shifted to full support of the war effort.

Ideological divisions were sufficiently strong that when the Commonwealth government banned the CPA in 1940, the ACCL refused to oppose the move. Although in Canada the banning of the CPA mobilised rights activists during the war, bringing people like Liberal Senator Arthur Roebuck to their defence, in Australia Fitzpatrick was chastised for publicly criticizing the government for the ban. In fact, Barry went so far as to move in August 1940 that Fitzpatrick be removed as General Secretary for comments he made to the press regarding the ban (he later retracted). According to the ACCL's minutes, the

Council has never adopted any policy on defending an illegal organisation. In fact, on the Monday after the Communist Party was declared illegal, Mr. Blackburn and Mr. Slater had agreed informally that nothing should be done. He considered Mr. Fitzpatrick's telegram to be wrong in attitude, and his letter to the Daily News provocative.⁷⁴

Ideological divisions also caused some problems in regards to tactics. Anyone with Marxist views, including Fitzpatrick, would have considered the ACCL limited in its tactics. Among the group's leadership, with social democrats and left liberals like Henry Burton or J.V. Barry, there was preference to working within parliamentary means and avoiding attempts to use non-institutional means for pressuring the state. Burton and Barry, as well as the ALP itself, were active in discouraging organised labour from taking advantage of labour shortages and using the power of organised labour to wring greater concessions for wages and working hours. Most communists, in the early stages of the war, did not share this desire for restraint.

The central issue which divided the Council and highlighted its limitations was the introduction of the National Registration Bill in 1939 calling for all men between 18 and 65 years of age to register and allow for compulsory allocation of labour to particular industries. Fitzpatrick found himself at odds with the ACCL president, Burton, and several other members over whether or not to oppose the Bill and to support the ACTU call for a boycott. When Fitzpatrick contacted the media to oppose the bill on behalf of the ACCL, Burton responded with his own letter contradicting Fitzpatrick and opening up the floodgates of reprisals within the Council.⁷⁵ To avoid Burton's resignation, an emergency committee was formed with Burton and Barry and a few others who were now responsible for issuing all press communications on behalf of the ACCL. The group produced a flyer in conjunction with the ACTU opposing the bill, but refused to organise a rally or support the boycott, preferring to work within parliamentary means.⁷⁶

There were many incidents during this period raising questions about state abuse of individual rights, but most failed to stimulate a major public debate on civil liberties issues. In 1944, an ALP government proposed a massive restructuring of the Australian constitution for a period of

five years following the end of hostilities to deal with post-war reconstruction. Among the many changes proposed were constitutionally entrenched protections for speech and religion. The referendum not only failed, but the provision for individual rights proved to be a minor issue during the debates.⁷⁷ Five years later, the Liberal government of Victoria appointed a Royal Commission under Justice Charles Lowe of the State Supreme Court to investigate the dangers presented by the Communist Party. The ACCL was particularly concerned over the appropriateness of a judge investigating a matter with the potential to lead to legal sanctions. The State government had decided to override a decision by the Chief Justice who had refused to provide a judge for the proceedings because he felt it was beyond the mandate of the judiciary.⁷⁸ In the same year, the ALP, under the leadership of Ben Chifley as Prime Minister, was faced with a massive coal strike threatening the economic health of the nation and decided to pass emergency legislation. The National Emergency (Coal Strike) Act made it illegal to belong to or support an organisation (notably unions) directly involved in continuing the strike and brought in the army to mine the coal.⁷⁹

In the same year as the coal strike, Menzies won a spectacular victory to defeat the ALP after eight years of rule; his coalition would stay in power for the following 23 years (Menzies himself would rule for 17 years). A central issue in the party's election platform was the banning of the CPA, a pledge they honoured on 27 April 1950 when the bill was presented to parliament. The Communist Party Dissolution Bill and the 1951 referendum brought the question of the vulnerability of civil liberties to the fore of Australian political debate. In its final form the bill banned the CPA as an unlawful association (as the federal government had done to the IWW in 1916-17) and all bodies affiliated with the party as well as organisations suspected of being communist fronts were dissolved. Anyone who continued to carry on any of the functions of the organisation after it was dissolved was to be jailed for five years. Upon the making of a declaration in respect of a person under the Act by the Governor-General, any 'Communist' would be suspended from office or employment in the Commonwealth public service or the defence forces, or from holding office in an 'industrial organization'. A Communist was defined as a 'person who supports or advocates the objectives, policies, teachings, principles or practices of communism, as expounded by Marx and Lenin'. Should a person claim they were not the person named in the declaration they could appeal to a court to have the declaration set aside. If declared persons appeared in court and gave evidence on their own behalves, it became the task of the Government to prove that they were actually the persons named in the declaration.⁸⁰ Drawing upon the findings of the 1949 Victorian royal commission investigating the CPA, the preamble to the legislation attempted to justify the Commonwealth's power to ban a 30-year-old political party by linking the bill with the federal defence power. The inclusion of 'industrial organizations' and requiring accused leaders of unions to step down or face hefty fines, immediately guaranteed Menzies and his bill the enmity of the entire labour movement. The Prime Minister even went so far as to name 53 individuals who were executive members of unions and would be required to step down (a list he was later forced to amend due to some errors).⁸¹ The legislation was defeated in the High Court and an attempt to force the legislation into effect through a national referendum in 1951 also failed.

Finally, in 1955, Menzies appointed a royal commission to investigate the accusations, supported by the defector Petrov, of a Russian spy ring operating in Australia. The Australians had learned a lesson from their Canadian counterparts, however, and avoided the main topic of debate that had raised the ire of civil libertarians in Canada. Unlike the Canadian commission, suspects were not arrested and held incommunicado, the commission was not held *in camera* but conducted its

proceedings in public, and no charges were laid based on the commission's investigation. Nevertheless, the ACCL raised several concerns. In a flyer written by Fitzpatrick, the ACCL found no basis for calling the commission except as a public smear campaign against communists. There was little or no available evidence of any actual spy ring (as suggested by the lack of prosecutions) and witnesses were called forth on the flimsiest of evidence.⁸² Yet, despite the commission's high profile, there does not seem to have been a major public debate on the legitimacy of government actions in this case.

Of all these events, only the dissolution bill and subsequent referendum were effective in stimulating a major post-war public debate in Australia on the issue of civil liberties. The dissolution bill had provided for the elimination of an established political party and appointed a receiver to confiscate its holdings. But the issue of greatest concern for Ben Chifley (leader of the ALP) and H.V. Evatt (deputy-leader), both openly anti-communist, were the provisions for onus of proof. Under the bill, averments (statements of a case against a person by the state) would be considered *prima facie* evidence of the individual's guilt, and the accused would be required to disprove the accusation. In effect, the averment made people guilty until proven innocent. Chifley even suggested the legislation could be used against members of the ALP, and one Labor Senator was in fact threatened with the possibility of being sanctioned under the proposed law. Having been recently defeated in an election in which the dangers of communism was a key theme, Chifley was careful to emphasise his party's opposition to communism, and focussed his attacks on clause nine dealing with onus of proof, clause five removing the right of appeal to courts, and clause 20 allowing for search and seizure without warrants. The leader of the Official Opposition set the tone of the debate in his opening speech with challenging the

Government the task of proving that legislation of this kind can be made to work, and can produce the results that honourable members opposite claim it will produce. Therefore, we do not propose to contest that portion of the bill which deals with known Communists. However, we do intend to amend, if possible, provisions that we regard as a complete negation of the principles of human justice and liberty.⁸³

The ALP used the civil liberties issue to the fullest, and Menzies was aware in preparing the bill of the obstacle he was facing, particularly since Evatt was a well known civil liberties and labour lawyer. In his opening speech for the bill, Menzies focussed on the threat communism represented to the political and economic health of the country, pointing to the experiences of the seaman's strike and coal strike of 1949 as evidence of the threat. In response to anticipated accusations of rights abuse, he countered with the question

What is liberty? Liberty is not an abstraction. It must be related in this world and in these days to the recognition of the State and, in democracy, to the recognition of self-governing institutions. Unless that is true there can be no such thing as treason, no such thing as subversive activity ... if ideas give rise to overt action, and that action is against the safety and defence of the realm, we are not only entitled but also bound to suppress it.⁸⁴

Fellow Liberal and Country Party members of the House of Representatives countered with the same argument, claiming a greater threat existed than the one posed by the invasion of traditional liberties.

Using a theme notable throughout the war and the rising Cold War, the Minister for External Affairs argued that

liberty of the subject must give way to the challenge of conspirators who are seeking to destroy this country internally and are, as I understand it to be conceded, working in the interests of foreign power.⁸⁵

Paul Hasluck reiterated the traditional argument of parliamentary supremacy:

So long as the will of society is freely expressed through a freely elected Parliament, not the slightest infringement of any democratic principle is infringed only if and when those changes are brought about by means of a tyrannical act and when they are enforced in a totalitarian state. When changes are expressed by society through a freely elected Parliament, and freely accepted by society surely there can be no infringement of the democratic principles.⁸⁶

The press joined the fray clearly in favour of the legislation. Editorials in the *Courier Mail* (Brisbane), *Sydney Morning Herald*, *Age* (Melbourne), *Advertiser* (Adelaide), *Mercury* (Hobart) and *Western Australian* (Perth) all voiced their support for the legislation. The editor of the *Advertiser* claimed that if the

Commonwealth's authority does not suffice to deal with the Australian Communist Party and its internal allies and instruments, the community itself is empowered to amend the Constitution in the needful degree, and would make no bones about doing so.⁸⁷

The *Mercury* believed the

Prime Minister made out a case which is unanswerable. Communism is no longer to be regarded as a political philosophy. It is an avowed enemy and must be dealt with as such,⁸⁸

and the *Western Australian* dismissed the libertarian argument by placing the issue within the context of whether the

Communist activities have passed the safe point of democratic tolerance and whether the outlawry of the Communist Party can be adequately enforced to restrain underground Communist machinations.⁸⁹

In each case, the ALP's defence of democratic freedoms was dismissed.⁹⁰

The three major newspapers in Australia issued similar appeals. The *Courier Mail* contended that

if democratic liberty is to be preserved for all who believe in it, it must be defended against enemies who would destroy it. It cannot allow itself to be used for its own destruction, and that is the only use communists have for free speech and other democratic rights.⁹¹

The largest of the Australian papers, the *Sydney Morning Herald*, was virulently anti-communist and rejected outright the ALP's position. The paper assured voters that 'care has been taken that, in overcoming them, normal liberties of association and expression dear to every free community are not abridged'.⁹² Only the *Age*, concerned with the due process violations contained in the legislation, appeared hesitant to support the bill. An editorial warned Menzies that

many who are not in the Labour camp, but who respect established rights and freedoms, find it hard to resist the impression that some procedural aspects are of such Draconian severity as to require the most searching analysis of their implications ... There are obvious risks in the conferment on security police of wide powers of entry, visitation and search without warrant.⁹³

Debates over the bill's attack on civil liberties was a central theme in the media's commentary. An average of 19 editorials appeared in the three large papers within two months of the bill's introduction, with approximately 25 per cent dealing with the civil liberties issue.

Between 26 April 1950 and mid-June 1950 (when the House finished sitting), a debate raged in the House and media, with civil liberties as a central theme.⁹⁴ With its majority in the Senate, the ALP had the option of defeating the bill but chose instead to push for amendments, particularly in regard to onus of proof, to avoid a double dissolution.⁹⁵ Refusing to cooperate, Menzies rejected the amendments, confident he could win another election and gain a majority in both Houses of Parliament. The Senate eventually agreed to pass the legislation. At this point, October 1950, the debate shifted to the courts. A High Court challenge was mounted by the CPA and ten powerful unions, including H.V. Evatt representing the communist-led Waterside Workers Federation. In the official decision handed down in March 1951, the High Court ruled against the Commonwealth. All but one of the judges did not consider the defence power wide enough to include a peacetime suspension of rights, and considered the clause on seizure of property as an invasion of State's rights. What is particularly notable in the transcripts of the case is the lack of major discussion on the rights of association and other fundamental liberties, including reversing the onus of proof, during the arguments. Only Evatt raised the question, suggesting that it was

difficult to imagine a more serious infringement of what is called the right of association, a right to which Your Honour the Chief Justice referred recently in one of the Preference cases, *The King and Wallace*, when Your Honour referred to the Declaration of Human Rights, to which Australia is a party, although of course it has no direct operation here as a law.⁹⁶

Otherwise, only civil rights were discussed during the proceedings, in the context of individuals' right to property against seizure by the federal government. In a country lacking entrenched freedoms and a Bill of Rights, with a court concerned primarily with honouring legalist principles, it is not surprising there was little debate on the rights issues in the High Court. It was an assumed theme of the debate that parliament had the power to legislate against due process rights and freedom of association without hindrance. The only question for the court was jurisdiction.

A notable absence throughout these debates was the lack of any comment or activity from the ACCL. There was no mention of them in the press or the House debates, and there is no evidence

they were involved in the High Court challenge with Evatt and the unions against the dissolution bill. Fitzpatrick was responsible for writing a few pieces of literature, pamphlets and a few detailed reports, on the implications of the dissolution bill. In these he emphasised the findings of the Victorian commission on espionage and its inability to find concrete evidence of sedition by the CPA, and the existing provisions under the Crimes Act as the only necessary protections Australians needed against sedition.⁹⁷ But the High Court challenge was funded by specific unions and neither Eddie Ward nor Maurice Blackburn raised any mention of the ACCL's position during the parliamentary debates.

The defeat of the Communist Party Dissolution bill was hailed as a victory for the rights of individuals and would be a powerful propaganda weapon in the upcoming referendum. Menzies had managed to force a double dissolution in 1951 with banking legislation rejected by the Senate, and earned himself a majority in both Houses after the following election. One of his first acts was to announce a referendum in July 1951 to provide the Commonwealth with the powers to implement the same legislation defeated in the High Court. A renewed public debate was initiated on the question of whether or not the communist threat justified state-imposed limits on the traditional rights of due process (onus of proof) and freedom of association.

There were three aspects to the referendum question. The first asked voters to give parliament the power to pass the Communist Party Dissolution Bill despite having been defeated in the High Court. Secondly, voters were asked to allow the government to make any alterations necessary to the legislation in order to suppress communist activity. Thirdly, parliament was seeking a general power to legislate with respect to communists or communism in Australia. All of these powers would be added under the heading of 51 (a) of the constitution under the federal defence power.⁹⁸

The ALP (led now by Evatt following Chifley's death in June), Liberals and the CPA threw themselves with renewed fervour into the debate between July and the day of voting on 22 September 1951. The CPA alone aimed to spend £40,000 and distribute numerous leaflets and pamphlets, including five million in Sydney. In the end, the proposal was defeated by a narrow majority- less than 0.5 per cent majority for the No side. New South Wales, Victoria and South Australia all recorded No majorities with an overall vote of 2,317,927 casting Yes ballots to 2,370,009 people voting No.⁹⁹

Civil liberties was by far the dominant theme of the debate. In the House of Representatives, Menzies tried to avoid the rights issue by focussing on the jurisdiction of parliament and the need to deal with a communist-led crisis. The official opposition, however, with Evatt in the lead, focussed completely on the rights issue. He reiterated the ALP's distaste for communism and the CPA while refusing to support a blanket abandonment of British principles of justice for a threat which, he suggested, could be dealt with under the sedition clause of the Crimes Act.¹⁰⁰ Evatt defended the ALP's position that

no man should be convicted, or deprived of civil rights, merely because he holds certain beliefs, any more than that he should be allowed to justify the commission of some crime on the ground that he held such beliefs. It is not the beliefs but the crime that matters.¹⁰¹

Eddie Ward, member of the ACCL, claimed the government's purpose was to 'destroy the trade union movement as a preliminary to the complete destruction of democratic government in this

country', and noted how the bill gave the

Government an almost complete power over the rights and liberties of the people. It gave the Government the right to arrest workers without warrant and keep them imprisoned for ten days without being asked to prefer charges against them.¹⁰²

Frank Crean, member for Melbourne Ports of the ALP (treasurer under the Gough Whitlam government and father of future ALP leader Simon Crean), also noted the dangers involved in parliament infringing upon the fundamental right to association and political belief. According to Crean, the

danger inherent in this measure was, as the Leader of the Opposition said, that it will invert the normal processes of British Justice and stigmatise people, not because they have committed an overt act of criminality but because they hold certain beliefs. It is an attack upon the beliefs of certain people. An Act of Parliament cannot destroy the beliefs of individuals, if those beliefs are honestly held.¹⁰³

Menzies' supporters in the Liberal and Country Parties fought back with their own views on how the bill affected individual rights. As was the case a year earlier, most of the bill's defenders focussed on the extent of the communist threat and the need to put aside rights during a crisis.¹⁰⁴ Others raised the banner of parliamentary supremacy and the right of government to legislate in any field it felt necessary to protect the integrity of the state. Dozens of individual members from each side of the House rose to either defend the rights of individuals and warn about the threat to organised labour, or to assert the dominance of parliament and the need to deal with the communist threat.

Once again the media joined the fray, eager to reiterate the same positions in the referendum campaign they had established during the debate over the Communist Party Dissolution Bill. The incredible support enjoyed by the Yes side in the popular media during the referendum campaign was a testament to the success of Evatt and the ALP in fighting the referendum (a Gallup poll taken by the *Courier Mail* in July suggested 80 per cent would vote Yes).¹⁰⁵ All the major papers including the *Courier Mail*, *Sydney Morning Herald*, *Advertiser*, *Mercury* and *Western Australian* favoured a Yes vote. Even the *Age*, normally sympathetic to the ALP and having refused in 1950 to accept the dissolution bill, supported the referendum initiative. In regard to the ALP's concern over individual rights, one editorial in the *Age* noted that

since Parliament is elected by the people, fears of the situation getting out of hand and civic rights being swept away, are chimeras ... In war we surrender some freedoms in defence of freedom itself. Our present twilight of half-peace, half-war demands emphasis on security rather than on the liberty of a group of people in our midst to conduct subversive activities and to pursue revolutionary aims. The Crimes Act is scarcely a deterrent for this purpose, as it can be invoked only after an offence when the damage has been done. The need is to prevent the damage from the enemy within.¹⁰⁶

The referendum brought the debate to the average Australian citizen in a way the legislation

never could. Various groups were drawn into the debate, creating divided loyalties. The referendum had become a battle between the ALP and the Liberal/Country party, and the results suggest the ALP had been able to draw supporters away from their opponents.¹⁰⁷ A group of Young Liberals and Country Party members in Victoria were expelled when they wrote to the *Age* noting their opposition to the bill for infringing on individual rights.¹⁰⁸ A well-publicised letter in the *Argus* from several ‘distinguished citizens’ including doctors, university professors, lawyers and clergymen encouraged a No vote against a referendum which offended the ‘long-standing British principle that legislation should not be directed against a group of individuals or a group of individuals described by reference merely to the doctrines to which they adhere’.¹⁰⁹ The *Courier Mail* suggested in its analysis of the referendum that the ‘theological and philosophical doubts on the Anti-Communist Bill raised by some Protestant clergy were a most potent factor in perplexing many electors who had implicit faith in Menzies’.¹¹⁰ The leaders of each party also engaged the public in numerous ways, through radio presentations and public speeches.¹¹¹ The referendum had undoubtedly raised the public profile of the communist menace and the vulnerability of civil liberties in a way the dissolution bill, 1944 referendum, Crimes Act, WWII emergency powers and the espionage commission had failed to do.

The ACCL had virtually no presence during the debates of 1950 and 1951. Neither Fitzpatrick’s biography nor his personal papers indicate the level of activity within the ACCL by the 1950s, but it is likely the group was already past its prime. Several members had resigned believing there were communistic influences in the ACCL. Another member resigned in 1953 as Vice President because the

position has no actual reality – that is to say, no consultation on policy takes place, so that a Vice-Presidency is purely ornamental. It amounts to lending one’s name for projects on which one is not consulted.¹¹²

A flyer written on the dissolution bill in 1950 noted that the organisation had minimal funds, no office and no paid personnel.¹¹³ It is highly probable Fitzpatrick and a few dedicated volunteers were all that was left of the ACCL by the 1950s. Nonetheless, Fitzpatrick himself produced several pamphlets attacking the bill and referendum as attempts to suppress a legitimate political party and undermine due process of law.¹¹⁴

The impotence of the ACCL throughout this debate should be appreciated within the larger context of divisions within the Left. Within a few years, the espionage commission would trigger a massive split within the ALP, leading the more conservative elements of the party to form the Democratic Labor Party. Accusations of being soft on communism was an important critique from the ALP Right-wing against the party’s leading elements, informed in part by the ALP’s opposition to the dissolution of the CPA and Evatt’s representations before the Royal Commission on Espionage. The NSW ALP had already experienced a split early during the war, with J.T. Lang forming his own NSW ALP [non-communist] in 1940. The creation of a divided labour party, lasting until 1944 when a diminished communist wing (Australian Labor Party, State of NSW) merged with the CPA, would lead to a defeat of labour in the NSW election in 1944.¹¹⁵ By 1950-51, the CPA had adopted a more moderate position. The party had drawn back from its hostility towards the Chifley government in an attempt to build alliances within the ALP labour Left and gain greater influence within the federal party.¹¹⁶ But the leading forces within the ALP refused to accept any form of cooperation with communists. Members of the ALP who opposed Evatt’s position in 1950-51 and

1955 represented a strand of thought within the Left refusing to be seen cooperating with communists. Evatt and Chifley opposed Menzies' attacks on the CPA for political reasons, and made no qualms of their own opposition to communism and the CPA. The ACCL, composed almost exclusively of members from the political Left and members of the ALP, would have reflected these divisions. It is little wonder the ACCL was unable to mobilise much support within its own ranks to challenge the dissolution bill and referendum.

Even Canada had a small role to play in these debates. In Fitzpatrick's commentaries on the dissolution bill and Chifley's speech before the House in 1950, there were references to Canada's position on the Communist Party. Chifley noted in his opening salvo against the dissolution bill how similar

legislation was introduced into the Canadian Parliament some time ago which banned the Communist party, but no attempt was made on that occasion to do what this legislation proposes to do. As a matter of fact, the present Prime Minister of Canada, Mr [Louis] St. Laurent, has made it perfectly clear that he does not believe this type of legislation can do anything to combat communism.¹¹⁷

The debates in 1950 and 1951 had another curious effect – the creation of new civil liberties associations. In November 1951, the Australia-New Zealand Civil Liberties Society was founded with ties to the Australian Sheet Metal Workers Union (communist-led) and to the newly formed New Zealand Council for Civil Liberties.¹¹⁸ A Queensland Civil Liberties League corresponded with Fitzpatrick in early 1951 asking for affiliation with the ACCL.¹¹⁹ The Democratic Rights Committee (DRC) was a communist front formed around the same time as the Communist Party Dissolution Bill was introduced. A similar group was formed in South Australia (Adelaide) originally called the South Australia Council for the Defence of Civil Liberties in March 1950 with plans to link up with the DRC located in Melbourne.¹²⁰ In Sydney, the League for the Defence of Democratic Liberties also emerged in March 1950, with 50 founding members and a focus on protecting freedoms of speech and expression.¹²¹

No doubt several of these groups were formed purely in reaction to the events of 1950-51 and at least two were direct creations of the CPA. Fitzpatrick kept no more correspondence with these organisations and none of them figure prominently in the referendum debates of 1951. In all likelihood, they became defunct within a few years. The ACCL was, for all intents and purposes, also inactive by the mid-1950s, and by 1960 existed as a group in name only. One of Australia's most dynamic and influential community groups had come to an end.

Australia and Canada Compared

The Canadian espionage commission and Menzies' attempts to dissolve the Communist Party of Australia represented important post-World War II debates in Canada and Australia over the vulnerability of civil liberties to state abuse. Each event emphasised the central themes of the post-World War II civil liberties movements including the divisions between social democrats and communists, contrasting conceptual approach to civil liberties, and the failure of the courts to adequately deal with these issues.

Structurally, the two movements had a great deal in common. They were movements

composed primarily of middle class professionals, mainly lawyers, journalists, academics and ministers. Minorities such as Jews or Aboriginals were generally unrepresented in the groups discussed herein, although they were active in the rights movement in general.¹²² Prominent and respectable members of the community adopted leadership positions; B.K. Sandwell of the CLAT was the editor of a well-known magazine, *Saturday Night*, and at one point Governor of the Canadian Broadcasting Corporation, while Herbert Burton of the ACCL taught economic history at the University of Melbourne. They dealt with many of the same issues including censorship, police powers, excessive use of war-time powers, and freedom of association in opposing the ban on the Communist Party during the war. Canadians and Australians also limited themselves to the same tactics: writing letters to members of parliament, publishing advertisements, organizing rallies, sending observers, developing pamphlets, and providing legal support. Legal aid, however, was a more common tactic in the ACCL than its Canadian counterparts. The few instances of legal aid by Canada civil liberties groups included the MCCLU challenge to the Padlock Act, while the Vancouver branch of the CCLU focussed its early efforts on defending William Ravenson, a book shop owner put on trial during the war for carrying literature threatening the safety of the state.¹²³ The life span of the two movements were also parallel. The ACCL and the CCLU emerged in the 1930s in response to repressive legislation targeted, predominantly, against communist organisations and literature, and both movements became defunct in the late 1950s. Attempts to form a national movement in both countries failed, and civil liberties groups in Canada and Australia remained rooted in their respective urban centres.¹²⁴

One of the central reasons for their inability to form a national coalition relates to one of the movement's central themes: the divisions between communists and social democrats. The Canadian movement was rife with internal divisions; the OCLA spent its first few years fighting attempts by communists to take control of the group's executive while divisions within the CLAT led to the creation of a splinter group in 1946. Attempts to form national coalitions in 1941 and 1947 failed as a result of many social democrats' refusal to cooperate with communists. What is most notable about the debates surrounding the espionage commission was the silence among many prominent civil libertarians. Frank Scott, arguably the most well known personage amongst libertarians during the period, did not figure prominently in the debates. The MCLA, of which Scott was a member, limited its activities to publishing an advertisement condemning PC6444 and not the commission. Scott, alongside many CCFers of the period, refused to cooperate with communist led groups, including the ECCR¹²⁵. The CLAT decided in 1946 that

it would not serve the interests of our Association to hold any sort of public meeting or demonstration until more facts are known and the trials in the courts are over.¹²⁶

Sandwell was nonetheless active in criticizing the commission in the pages of *Saturday Night*, but another well known magazine for criticizing the government for its civil liberties abuses throughout the war, the *Canadian Forum*, limited its coverage of the espionage commission to a few articles defending the communists' views and one condemning preventative detention.¹²⁷ It is difficult to avoid the conclusion that the suspected spies' communist affiliations dampened the enthusiasm of many libertarians to defend their rights in the context of the emerging Cold War.

Ideological divisions were no less a problem within the ACCL, although they figure less prominently in the group's activities. While Fitzpatrick was able to play a central role in the

operations of the ACCL despite his Marxist views, there is little doubt he was forced to moderate his ideas and tactics. The debate over the National Registration Bill was evidence of the divisions within the group. Fitzpatrick was determined to oppose the legislation and support the boycott proposed by the ACTU, but opposition from the social democrats within the ACCL, including Barry and president Burton, increased divisions within the organisation. Burton and Barry preferred to work within parliamentary means and opposed the boycott in principle. It was only an agreement to avoid supporting the ACTU and forming an emergency committee to filter all the association's public statements which prevented an open split within the ACCL. As the Cold War heated up in the late 1940s, members of the ACCL started breaking away, accusing the group of communist sympathies. By 1950-51, the ACCL was increasingly inactive and played a surprisingly minor role in the most important debate on civil liberties in post-World War II Australia.

Divisions between social democrats and communists reflected a second theme in the post-World War II civil liberties debates in Canada and Australia: differing conceptions of civil liberties. The constitution of the CCLU and the ACCL both reflected an approach to civil liberties as civil and political rights. These were the traditional British freedoms inherited by both former colonies and played a dominant role in the political debates surrounding the dissolution bill and the espionage commission. In particular, these groups emphasised the importance of freedoms of speech, assembly, expression, religion and press as well as due process rights, notably habeas corpus. In contrast, the constitution of the CLDL (the Canadian communist group of the 1920s and 1930s) called for the organizing of 'campaigns of protest against the white terror in other capitalist countries and to give moral and financial aid wherever possible to the victims of such terror'.¹²⁸ The inclusion of social and economic rights in the CLDL manifesto, including the right to work and a fair wage, were at odds with the traditional libertarian view of rights which dominated most of the Canadian groups and the ACCL. As Fitzpatrick's biographer states, the ACCL attempted

to function in an ideological vacuum by putting 'justice' ahead of politics. It defends the freedoms assumed to be sacred in a capitalist democracy and, in a spirit of gradualism or with an air of resignation, bypasses the fact that equality before the law is often dependant on economic and social equality. In making the ACCL his vehicle, Fitzpatrick accepted these contradictions and attempted to turn them to a more radical end than most of the membership would have intended.¹²⁹

The civil liberties movements of both countries articulated a narrow approach to individual rights, especially in their exclusion of anti-discrimination issues. The ACCL was generally blind to the plight of Aborigines, and it was not until the 1950s that the ACL became involved in promoting anti-discrimination legislation.¹³⁰

The final common theme between the early Australian and Canadian civil liberties movements was the inability of the law to deal with the same issues raised in public debate over the vulnerability of civil liberties to state abuse. Although the CPA was successful in appealing the prosecution of Harold Devanny (publisher of the *Workers Weekly*) to the High Court for lack of evidence, and was well represented by competent lawyers before the Lowe Royal Commission and before the High Court on the Communist Party Dissolution case, communists had little regard for the legal system in its early years as a forum for redress. According to David McKnight, the significance of this legal and political victory in the High Court was hardly understood by the CPA,

which took great pains to minimize it. The reasons for this are bound up in the CPA's view that democracy in capitalist society was a sham. To hail the decision would be to give credit to a conservative institution of capitalist society.¹³¹

Learning from their successes, the attitude of the CPA towards the courts quickly changed. Within a few years, the CPA and Friends of the Soviet Union used the threat of litigation as a tactic for convincing the federal government to lift bans on the use of the postal service. 'The positive acceptance of legal means by FOSU show just how far the CPA had come since its reluctance to use 'bourgeois legality' three years earlier'.¹³²

There were also broader, more systemic limits on the use of the courts against the suppression of communism and the defence of individual rights. In parliament and among the press, questions were raised regarding the need to defend freedom of association and speech, the need to limit the state's ability to violate traditional British liberties, and the implications of banning a legitimate political party. These issues were rejected in court as valid arguments for adjudicating the validity of legislation properly passed in parliament. Judges cloaked their arguments in the language of parliamentary supremacy and focussed on the question of whether or not a legitimate crisis existed. In his dissenting opinion on the Communist Party Dissolution case, Justice John Latham asserted the power of parliament to decide 'whether there is, or is likely to be, a crisis or position of danger requiring the exercise of defence power or the power to protect constitutional government',¹³³ and that 'the validity of a law is challenged in the courts, the courts are concerned only with the question whether the law was, as a matter of law, within the power of Parliament'.¹³⁴ The majority decision, led by Owen Dixon, opposed the first point but not the latter. Dixon believed the Commonwealth could not ban a political party in peacetime on the basis of the defence power, but limited his argument to questions of jurisdiction. Only two judges, Edward McTiernan and Dudley Williams, considered the broader implications of a parliament invading traditional liberties.¹³⁵ According to Justice McTiernan, the

general control of civil liberty which the Commonwealth may be entitled to exercise in wartime under the defence power is among the first of war-time powers that would be denied to it when the transition from war to peace sets in.¹³⁶

Nonetheless, both judges limited their final decision to state jurisdiction (property rights) and the defence power, refusing to acknowledge the legitimacy of these issues in determining the case before them.

Such was the case with the spy trials of 1946-49. When Justice E. Stuart McDougall of the Québec Court of King's Bench was faced with the question of admitting the commission's transcripts in 1948, he used the existence of a crisis caused by the defection to justify the admissibility of evidence:

In such situation, speaking for myself alone, I believe that the normal and salutary safeguards surrounding the admissibility of evidence against an accused charged with dereliction of his duty as a citizen, are not to be stringently applied, with the result that the range of admissibility is inevitably enlarged or widened. The rules of evidence in such cases lose, in part, some of their ordinary potency in the face of national necessity. War-time emergency sets a pattern of conduct alien to the usual amenities of peaceful existence, which

may impinge upon the common rights and liberties of the subject. It can scarcely be otherwise when the very life of the nation is in jeopardy.¹³⁷

The rhetoric of crisis and the language of parliamentary supremacy had become the institutional defence for the invasion of civil liberties. Menzies and his allies in Parliament attempted to use this approach in 1950 and 1951 to justify the banning of a 30-year-old political party, and defendants before the High Court were required to argue questions of jurisdiction in order to defend their civil liberties. In Canada, St. Laurent and Ilesley used the same language to justify the extreme measures adopted by the commission in its quest to root out spies, and the courts legitimised their actions by admitting the transcripts.

While the Royal Commission on Espionage in 1946 marked the high point for the Canadian civil liberties movement, the ACCL was already in decline by 1951. Neither the ACCL, nor the ACL and LDR, survived the 1960s. A new generation of libertarians emerged in the 1960s, beginning with the New South Wales Council for Civil Liberties and the British Columbia Civil Liberties Association in 1963. They had no ties to the activists of the previous generation.¹³⁸ The first wave civil liberties movements of Canada and Australia, with their ideological and conceptual divisions, was effectively defunct by the late 1950s.

Endnotes

1. *Australian*, 23 July 2002.
2. The only text to explore the Australian civil liberties movement in detail is the biography, Don Watson, *Brian Fitzpatrick: a Radical Life*, Hale & Iremonger, Sydney, 1979. In Canada, however, there has been a surge of interest in the field including: Frank K. Clarke, 'Debilitating Divisions: the Civil Liberties Movement in Early Cold War Canada, 1946-8', in Gary Kinsman (ed.), *Whose National Security? Surveillance and the Creation of Enemies in Canada*, Between the Lines, Toronto, 2000; Dominique Clément, 'Spies, Lies and a Commission, 1946-8: a Case Study in the Mobilization of the Canadian Civil Liberties Movement', *Left History*, vol. 7, no. 2, Fall, 2000, pp. 53-79; Ruth A. Frager and Carmela Patrias, "'This Is Our Country, These Are Our Rights': Minorities and the Origins of Ontario's Human Rights Campaigns', *Canadian Historical Review*, vol. 82, no. 1, March 2001, pp. 1-35; Ross Lambertson, 'The Dresden Story: Racism, Human Rights, and the Jewish Labour Committee of Canada', *Labour/Le Travail*, vol. 47, Spring 2001, pp. 43-82; Lucie Laurin, *Des Luttes et Des Droits: Antécédants et Histoire de la Ligue des Droits de l'Homme de 1936-1975*, Éditions du Meridien, Montreal, 1985.
3. For further information on the Winnipeg General Strike and appeals to revolution across the country within the context of the strike, refer to: Greg Kealey, 'State Repression of Labour and the Left in Canada, 1914-20: the Impact of the First World War', *Canadian Historical Review*, vol. 73, no. 3, 1992, pp. 281-314.
4. Frank Scott, *Essays on the Constitution: Aspects of Canadian Law and Politics*, University of Toronto Press, Toronto, 1977. pp. 68-70.
5. As quoted in Thomas R. Berger, *Fragile Freedoms: Human Rights and Dissent in Canada*, 2nd ed., Irwin Publishing, Toronto, 1982, p. 133.
6. D.A. Schmeiser, *Civil Liberties in Canada*, Oxford University Press, Toronto, 1964, pp. 217-218.
7. J. Petryshyn, 'Class Conflict and Civil Liberties: the Origins and Activities of the Canadian Labour Defense League, 1925-40', *Labour/Le Travail*, vol. 10, Autumn 1982, pp. 39-50.

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8. Larry Hannant, *The Infernal Machine: Investigating the Loyalty of Canada's Citizens*, University of Toronto Press, Toronto, 1995, p. 222.
 9. Accusations against the Québec government for misusing the Padlock Act against various minority groups were raised in hearings of a 1950 Senate committee in Canada investigating the possibility of creating a Canadian Bill of Rights (see Canada, 1950, Proceedings of the Special Committee on Human Rights and Fundamental Freedoms). For further details on the history of the Padlock Act, refer to: Thomas R. Berger, *Fragile Freedoms: Human Rights and Dissent in Canada*, 2nd ed., Irwin Publishing, Toronto, 1982; D.A. Schmeiser, *Civil Liberties in Canada*, Oxford University Press, Toronto, 1964.
 10. The constitution of the Canadian Civil Liberties Union (CCLU) described its guiding principles as follows: 'The CCLU is a non-political organisation, the object of which is to maintain throughout Canada the rights of free speech, free press, free assembly, and other liberties, and to take all such action as seems advisable in furtherance of their subject'. National Archives of Canada (NAC), Frank Scott Papers, MG30 D211, vol. 9, 'Civil Liberties, 1935-5 – CCLU constitution'.
 11. Ross Lambertson, *Activists in the Age of Rights: the Struggle for Human Rights in Canada, 1945-60*, PhD thesis, University of Victoria, 2000, pp. 39-40.
 12. *Ibid.*, p. 40.
 13. National Archives of Canada (NAC), Royal Canadian Mounted Police Papers, RG146, vol. 2883, 'Canadian Civil Liberties Association – copies of agent reports from rally and newspaper coverage', 1942.
 14. In discussing the history of the Montreal branch of the CCLU, Lucie Laurin argues that the repressive tactics employed by the state during the war through the Padlock Act and the Defence of Canada Regulations strangled the organisation. More recently, however, Larry Hannant has argued that the leader of the Montreal branch, R.A.C. Ballantyne, admitted in a letter to a colleague in the Communist Party of Canada [CPC] (Frank Park) that the executive suspended the branch's operations as part of the CPC's decision to throw support behind the government to fight the war. Laurin, *Des Luttres et Des Droits*, p. 35; Hannant, pp.236-237.
 15. Petryshyn, 'Class Conflict and Civil Liberties', p. 55.
 16. Norman Penner, *The Canadian Left: a Critical Analysis*, Prentice-Hall of Canada, Scarborough, p. 169.
 17. Records, although limited, are available on all seven civil liberties groups. Ramsay Cook provides an extensive analysis of the Winnipeg Civil Liberties Association (WCLA) in his 1955 MA thesis: Ramsey Cook, *Canadian Liberalism in Wartime: a Study of the Defence of Canada Regulations and Some Canadian Attitudes to Civil Liberties in Wartime*, MA thesis, Queen's University, 1955. He refers to organisations in Toronto, Montreal and Vancouver; the latter two were members of the CCLU. There are also letters dated between 1945-9 from the WCLA, Toronto branch of the CCLU and Toronto Civil Liberties Association which are available in the Diefenbaker Papers, NAC, John Diefenbaker Papers, vol. 9, 10 and 82). The Montreal Civil Liberties Association is on record as having made a presentation before the 1950 Senate Committee on Human Rights and Fundamental Freedoms.
 18. Clément, 'Spies, Lies and a Commission, 1946-8', *Left History*, vol. 7, no. 2, Fall, 2000, p. 3; Reg Whitaker and Gary Marcuse, *Cold War Canada: the Making of a National Insecurity State, 1945-1957*, University of Toronto Press, Toronto, 1994, p. 57.
 19. Canada, 1946, Royal Commission to Investigate Facts Relating to and the Circumstances Surrounding the Communication, by Public Officials and Other Persons in Positions of Trust of Secret and Confidential Information to Agents of a Foreign Power, p. 649.
 20. Whitaker and Marcuse, *Cold War Canada*, p. 58.

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21. Canada, Statutes, An Act Respecting Public and Departmental Inquiries, Revised Statutes of Canada (RSC), 1906, c. 104; Canada, Statutes, An Act Respecting Official Secrets, RSC, 1939, c. 49.
 22. For further details on the experience of suspects incarcerated in the Rockcliffe Barracks, refer to: Gordon Lunan, *The Making of a Spy*, Robert Davies Publishing, Toronto, 1995.
 23. The Diefenbaker papers contain copies of letters sent from Shugar to St. Laurent complaining about the conditions of his imprisonment and letters to Diefenbaker requesting that Diefenbaker bring his case before the House of Commons. NAC, John Diefenbaker Papers, vol. 82, p. 65326, letter from David Shugar to John Diefenbaker, 9 March 1946.
 24. These were some of the code names assigned by the Russians for their spies. Source: NAC, Records of the Department of Justice, RG 13, vols 2119, 2121.
 25. NAC, Records of the Department of Justice, RG 13, vols 2119, 2121, top-secret memorandum from E.K. Williams to Mackenzie King, 5 December 1945.
 26. Canada, *Hansard Parliamentary Debates*, 1947, vol. 4, p. 3187.
 27. *Ibid.*, 1947, vol. 2, p. 1301.
 28. *Ibid.*, 1947, vol. 2, p. 1306.
 29. *Ibid.*, 1947, vol. 2, p. 1306.
 30. *Ibid.*, 1947, vol. 2, p. 1343.
 31. *Ibid.*, 1947, vol. 2, pp. 2364-2366.
 32. *Ibid.*, 1946, vol. 1, pp. 65-67.
 33. *Ibid.*, 1946, vol. 1, p. 92; 1947, vol. 2, pp. 1330-1333.
 34. NAC, John Diefenbaker Papers, vol. 82, p. 65434, copy of St. Laurent speech before House of Commons, 1947.
 35. Canada, *Hansard Parliamentary Debates*, 1947, vol.2, p. 3217.
 36. Bryan Palmer, *Working Class Experience*, McGill-Queen's University Press, Montreal, 1992, p. 303.
 37. NAC, John Diefenbaker Papers, vol. 51, p. 41409, letter from George Drew to Diefenbaker, 18 March 1946.
 38. Averages are determined as follows: *Evening Citizen* (Ottawa), 47 stories; *Globe and Mail* (Toronto), 44 stories; *Vancouver Sun*, 44 stories; *Winnipeg Free Press*, 42 stories; *Halifax Herald*, 43 stories; *Montreal Gazette*, 43 stories. 263 stories divided by 6 papers totals 44. As a result, each paper produced 47 newspapers between 16 February 1946 and 16 April 1946 and a story on the commission appeared, on average, in 44 of these papers.
 39. James Chalmers McRuer of the Ontario High Court was the first judge to preside over one of the spy trials. He covered four of the espionage trials and established several precedents on the admissibility of evidence, including a decision to allow the use of the commission's transcripts. McRuer was later appointed to the Ontario Court of Appeals as Chief Justice and chaired the Royal Commission on Civil Rights (1967) in Ontario that was responsible for major revisions to provincial statutes to ensure greater protections for civil liberties. Among the 1967 commission's many recommendations was an amendment to the Ontario *Inquiries Act* to guarantee counsel for any witness brought before a government tribunal. He was also one of the founders of the Civil Liberties Association of Toronto alongside one of the commission's legal counsels, Andrew Brewin, who would himself eventually be elected under the banner of the New Democratic Party (formerly CCF). For further details on McRuer's life refer to: Patrick Boyer, *A Passion for Justice*, Osgoode Society for Canadian Legal History, Toronto, 1994.
 40. *Winnipeg Free Press*, 11 March 1946.
 41. *Vancouver Sun*, 19 March 1946.

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42. *Globe and Mail*, 6 March 1946.
 43. *Montreal Gazette*, 16 March 1946.
 44. *Halifax Herald*, 21 February 1946, 1 March 1946, 5 March 1946, 11 March 1946, 16 March 1946, 21 March 1946, 1 April 1946, 2 April 1946, 3 April 1946, 4 April 1946, 5 April 1946, 11 April 1946 and 15 April 1946.
 45. Raymond Boyer v. The King, 7 Criminal Reports, Québec Court of King's Bench, Appeal Side, 1948, p. 183.
 46. Rex v. Mazerall, 2 Criminal Report, Ontario High Court, 1946.
 47. In addition to the Canadian Bar Association's 1946 meeting, the annual meetings in 1944, 1945 and 1947 also discussed concerns over civil liberties' violations by the federal government during and after the war. It was in the 1944 meeting when the temporary civil liberties section of the Association, chaired by Chitty, recommended that the Association take a more active stance in lobbying the government for a Bill of Rights. See: Gustav Monette, 'Report of the CBA [Canadian Bar Association] Committee on Civil Liberties', *Canadian Bar Review*, vol. 22, August-September 1944.
 48. Canada, *Hansard Parliamentary Debates*, 1947, vol. 2, p. 3146.
 49. Lambertson, *Activists in the Age of Rights*, pp. 172-173.
 50. *Montreal Star*, 12 November 1946.
 51. The Emergency Committee for Civil Rights (ECCR) placed advertisements in the *Toronto Daily Star* on 15 June 1946 and 29 June 1946, while the Montreal Civil Liberties Association placed an advertisement in the *Montreal Star* on 12 November 1946.
 52. NAC, Records of the Department of External Affairs, vol. 2081, f. AR 13\13; NAC, Records of the Department of Justice, vol. 2119, vol. 2121; NAC, John Diefenbaker Papers, vol. 82, p. 65442.
 53. *Saturday Night*, 23 February 1946.
 54. NAC, J. King Gordon Papers, vol. 19, f.15, 'Report of a Fact-Finding Committee', report produced by the Ottawa Civil Liberties Association; NAC, Records of the Department of Finance, vol. 349, f. 101-85-24, "'Justice and Justice Only?' A draft memorandum on the fourth report of the Kellock-Taschereau commission', memorandum produced by the ECCR (Toronto).
 55. The event was attended by both Toronto groups, the Ottawa Civil Liberties Association (OCLA) and the Montreal Civil Liberties Association. Frank K. Clarke, 'Debilitating Divisions: the Civil Liberties Movement in Early Cold War Canada, 1946-8', in Kinsman (ed.), *Whose National Security?*, p. 177.
 56. There was a short-lived Civil Liberties Union in Montreal which made presentations before the Roebuck Senate Committee in 1950. The groups seems to have fizzled out soon after as there is no evidence of its continued activity. Canada, 1950, Special Committee on Human Rights and Fundamental Freedoms.
 57. According to historian Robin Gollan, Fitzpatrick was sympathetic to Marxism but was not dogmatic. In addition, of 'all the books published during the war, by far the most important for the left were those of Brian Fitzpatrick ... The importance of Fitzpatrick's works lies not only in the depth of scholarship but also in their political impact. They came at a time when the left was seeking an Australian identity ... His work provided a coherent justification for the belief that the labour movement was the bearer of the highest moral values in Australia society ... [and] remains one of the great seminal works of Australian history and literature'. Robin Gollan, *Revolutionaries and Reformists: Communism and the Australian Labour Movement, 1920-1955*, George Allen & Unwin, Sydney, 1975, pp. 96-97, pp. 190-191.
 58. Initially, the organisation consisted simply of a Board of Directors with Fitzpatrick as the General

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- Secretary and Henry Burton as President. Eventually, the Board expanded to include five State secretaries (NSW, Queensland, Western Australia, Tasmania and South Australia), and 12 additional members in the executive committee and the Vice-President of the legal panel. The group was also composed of State advisory committees, affiliated societies and a general membership. Individual membership was ten shillings, associate members paid two shillings and sixpence, and affiliated societies a minimum of ten shillings. National Library of Australia [NLA], Brian Fitzpatrick Papers, MS4965, f.1(a), 'Correspondence - constitution of the [Australian Council for Civil Liberties] ACCL, August 1940.
59. Watson, *Brian Fitzpatrick*, pp. 78-79.
 60. NLA, John Vincent Barry Papers, MS2505/9.115-229, Correspondence, 1935, 1936-40, letter from Brian Fitzpatrick to John Curtin, 2 April 1941.
 61. Watson, *Brian Fitzpatrick*, p. 120.
 62. NLA Brian Fitzpatrick Papers, MS4965, f.1 (d), Financial Papers, 1936-1956, December 1938 and 4 July 1941; Australian Council for Civil Liberties, *The War and Civil Rights*, 2nd series, A survey of action taken in various Australian States under the National Security Regulations, Dec 1940-April 1941 (list of affiliated organisations), May 1941.
 63. The Aliens Advisory Committee reviewed orders dealing with immigration, including deportations, while the Regulations Advisory Committee was mandated to review the National Security Regulations and provide recommendations in cases where freedoms were being unnecessarily limited. The Constitutional Alteration Bill was an attempt to gain, through referendum, special constitutional powers to deal with post-war reconstruction, powers reserved to the States.
 64. During World War I, a Nationalist government passed the Unlawful Associations Act. The legislation banned the Industrial Workers of the World (IWW), a radical wing of organised labour staunchly opposed to the war effort. It allowed for imprisonment of up to six months for belonging to the IWW and deportation for non-citizens. Following pressure from the Australian Labor Party (ALP), the government eventually amended the legislation to prohibit its use against *registered* trade unions. For more information on the IWW and its suppression during World War I, refer to: Frank Cain, 'The Industrial Workers of the World: Aspects of Its Suppression in Australia, 1916-1919, *Labour History*, vol. 42, 1982, pp. 54-62.
 65. Information on these pieces of legislation are contained in a series of publications by the ACCL soon after its formation. Refer to: State Library of New South Wales [SLNSW], Council for Civil Liberties (Melbourne), 'The Case Against the Crimes Act: With the Objectionable Political Sections Quoted', January 1937; SLNSW, Council for Civil Liberties (Melbourne), *Six Acts Against Civil Liberties*, August 1937.
 66. Watson, *Brian Fitzpatrick*, p. 64.
 67. The ACTU (Australian Council of Trade Unions) and Trades Hall of Melbourne endorsed and distributed ACCL literature on the Crimes Act. NLA, Brian Fitzpatrick Papers, MS4965, series 1 (a), f.1/193-268, Correspondence, 1937-38, letters between Brian Fitzpatrick and the ACTU, 1937-38; NLA, Brian Fitzpatrick Papers, MS4965, series 1 (a), f. 1/2111-2234, Correspondence, Affiliation, ACTU and Trade Hall Council, 1936-40, letter from Fitzpatrick to the Trades Hall Council of Melbourne, 18 December 1936.
 68. Despite their success in court, the CPA was still constrained by other regulations, notably a ban on the use of the postal service. Pressure by the CPA and Friends of the Soviet Union eventually convinced the federal government to lift the ban in 1937. David McKnight, *Espionage and the Roots of the Cold War: the Conspiratorial Heritage*, London: Frank Cass Publishers, 2002, pp. 143-144, 148-149.

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69. Watson, *Brian Fitzpatrick*, p. 84.
 70. NLA, Brian Fitzpatrick Papers, MS4965, Series 1 (a), Newspaper clippings, flyer published by the ACCL, 1941; NLA, Brian Fitzpatrick Papers, MS4965, Series 1 (b), f.1/3423-3435, 'Constitutions and Minutes/Agendas- memo by the General Secretary to the ACCL listing groups' accomplishments', 19 March 1956.
 71. Gollan, *Revolutionaries and Reformists*, pp. 96-97.
 72. National Archives of Australia [NAA], Australia Security Intelligence Organization Papers, file A6335, 'Australian Council for Civil Liberties- intelligence report number 112', 14 December 1939.
 73. Susan Blackburn, *Maurice Blackburn and the Australian Labor Party, 1934-1943: a Study of Principle in Politics*, Australian Society for the Study of Labour History, Sydney, 1969, p. 25.
 74. NLA, Brian Fitzpatrick Papers, MS4965, Series 1 (a), minutes of the ACCL, 6 August 1940.
 75. These events are detailed in Watson, *Brian Fitzpatrick*, pp. 93-95.
 76. NLA, John Vincent Barry Papers, MS2505, f.9/274-425, Publications, The Case Against the National Register, 26 June 1939; NLA, John Vincent Barry Papers, MS 2505, f.1/269-425, Publications- ACCL memorandum sent out to all members, 20 July 1939.
 77. The provisions for individual rights were only added after the bill was introduced. Menzies and others accused Evatt of simply inserting the provisions to 'sweeten' the referendum proposal and did not take them seriously. In Menzies' speeches and in publications on the referendum by both sides, the question of constitutionally entrenched fundamental freedoms was a minor issue. NAA, A8910, Alteration of Constitution: Federal Referendum, The Case For and Against, by the Chief Electoral Officer of the Commonwealth, 20 April 1944, sections of flyer approved by MP of both Houses who voted for and against; NLA, Robert Menzies Papers, MS4936, Series 6, Various Broadcasts 1942-1953, Guarantee Freedom, 17 March 1944.
 78. Brian Fitzpatrick, 'Constitutional Aspects of the Royal Commission on the Communist Party', flyer produced by the Australian Council for Civil Liberties, May 1949.
 79. Australia, Statutes, An Act to prohibit, during the period of National Emergency cause by the present General Strike in the Coal-mining Industry, the Contribution, Receipt or Use of Funds by Organizations registered under the Commonwealth Conciliation and Arbitration Act 1904-1948 for the purpose of assisting or encouraging the Continuance of that Strike, and for other purposes, 1949, No.20. For more information on the coal strike, refer to: Phillip Deery, 'Chifley, the Army and the 1949 Coal Strike', *Labour History*, no. 68, May 1995, pp. 80-98.
 80. Frank Cain and Frank Farrell, 'Menzies' War on the Communist Party, 1949-1951', in Ann Curthoys and John Merritt (eds.), *Australia's First Cold War, 1945-1953*, George Allen & Unwin, Sydney, 1984, p. 119.
 81. *Ibid.*, pp. 118-119; Federal Secretariat of the Liberal Party of Australia, Communist Party Dissolution Bill 1950, Second Reading speech by the Prime Minister of Australia, the Rt Hon. R.G. Menzies, KC, MP, delivered in the House of Representatives on 27 April 1950'.
 82. Brian Fitzpatrick, 'The Royal Commission on Espionage: a Commentary by Brian Fitzpatrick', National Press Pty Ltd, Melbourne, 1955. According to a recent article by Frank Cain, evidence existed at the time regarding Soviet espionage activities in Australia through American intercepts of Soviet radio traffic known as 'Venona'. However, the Americans only supplied some of the information they had gleaned from the intercepts to their Australia counterparts. The Americans were concerned about anyone revealing that they had access to Soviet radio traffic and any evidence they might have provided the Australians with would have to be produced in open court. The Petrov defection proved a convenient way of revealing Soviet spying without making available the Venona documents. Frank Cain, 'Governments and Defectors: Responses to the

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- Defections of Gouzenko in Canada and Petrov in Australia', in Margaret MacMillan and Francine McKenzie (eds.), *Parties Long Estranged: Canada and Australia in the Twentieth Century*, Vancouver: University of British Columbia Press, Vancouver, 2003, pp. 193-194.
83. Australia, *Hansard Parliamentary Debates*, 1950, vol. 207, p. 2272.
84. Federal Secretariat of the Liberal Party of Australia, Communist Party Dissolution Bill 1950, Second Reading speech by the Prime Minister of Australia, the Rt Hon. R.G. Menzies, KC, MP, delivered in the House of Representatives on 27 April 1950.
85. Australia, *Hansard Parliamentary Debates*, 1950, vol. 207, p. 2280.
86. *Ibid.*, p. 2387.
87. *Advertiser*, 27 April 1950.
88. *Mercury*, 28 April 1950.
89. *Western Australian*, 28 April 1950.
90. Of the seven newspapers surveyed, only the *Newcastle Morning Herald* reserved support for the legislation. Representing a district with a large working class population, the paper noted its opposition to communism while expressing concern that the legislation was a threat to organised labour. *Newcastle Morning Herald*, 27 April 1950.
91. *Courier Mail*, 2 May 1950.
92. *Sydney Morning Herald*, 26 April 1950.
93. *Age*, 1 May 1950.
94. The position of the *Labour Weekly*, the official organ of the NSW Labour Council and the NSW division of the ALP, was to support the ACTU's opposition to the legislation and the ALP's decision to allow the bill with amendments. The *Australian Worker*, journal of the anti-communist and powerful Australian Workers Union, focused on painting the bill as a political tactic of the Liberal government to force a double dissolution. As with the *Labour Weekly*, the *Australian Worker* supported the legislation calling only for amendments to protect the individual rights of the accused. *Labour Weekly*, 12 May 1950, 19 May 1950, 22 September 1950; *Australian Worker*, 3 May 1950, 10 May, 1950, 17 May 1950, 11 October 1950.
95. Under the Australian constitution in 1950, if the House of Representatives passed a bill twice and the Senate rejects it, both Houses are dissolved and an election is called.
96. State Library of NSW, Communist Party of Australia Papers, MSS502, f.103 (155), Court Cases-copies of transcripts for the Communist Party Dissolution case, 1950.
97. Brian Fitzpatrick, 'The Unnecessary Police State Bill: a Factual Account of the Communist Party Dissolution Bill, the Victorian Royal Commission Report on the Communist Party, The Australian Law Relating to Sabotage, Espionage and Treason', ACCL, July 1950. Brian Fitzpatrick, 'A Public Remonstrance: the Sedition Trials, the Proposed Ban on the Communist Party and the Political and Industrial Sections of the Commonwealth Crimes Act', Addressed to the Commonwealth Government by the ACCL, February 1950. Brian Fitzpatrick, 'A Bill for a Police State: Report on the Communist Dissolution Bill, First Report', AACL, 12 October 1950. All these materials are available at the NLA.
98. Cain and Farrell, 'Menzies' War on the Communist Party, 1949-1951', pp. 131-133.
99. *Ibid.*, p. 133.
100. Australia. *Hansard Parliamentary Debates*, 1951, p. 1213-1214.
101. *Ibid.*, p. 1220.
102. *Ibid.*, p. 1232.
103. *Ibid.*, p. 1238.
104. One Liberal MP, Bruce Kekwick, questioned Crean's priorities, and claimed communism threatened the nation's economic stability: 'The honourable member for Melbourne Ports (Mr

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- Crean) gave rather a tiresome discourse about what he termed individual liberty. Unless he and his colleagues take a more realistic view to the Communist threat to this country, it will not be long before liberty will be completely destroyed in the community'. (Australia, *Hansard Parliamentary Debates*, 1951, p. 1241). According to another Liberal MP (and future Minister of External Affairs), Gordon Freeth, democracy was defined by its 'ability to distinguish between times of national crisis and times when ordinary democratic freedom may be allowed to operate. The preservation of our fundamental human rights depends upon our ability to take strong action to defend them at certain times. That elasticity has preserved in Great Britain the idea that in times of crisis the country will take strong action which would be regarded in normal times as being tyrannical and that when normal times return the country will revert to the ordinary rule of law'. (Australia, *Hansard Parliamentary Debates*, 1951, p. 1266).
105. *Courier Mail*, 24 July 1951. Another poll taken just before the referendum suggested that almost one million people had changed their minds, with the Yes vote registering only 53 per cent support. *Courier-Mail*, 20 September 1951.
106. Appeals to the Crimes Act referred to the sedition clause (amended several times over the past few decades) which allowed for the prosecutions of groups like the CPA or Friends of the Soviet Union. Evatt, in the House of Representatives and the High Court, argued that the provisions of the Crimes Act were sufficient to accomplish what the Communist Dissolution Bill desired without delegating unnecessary powers to Parliament. *Age*, 17 September 1951.
107. Cain and Farrell, 'Menzies' War on the Communist Party, 1949-1951', p. 133.
108. *Age*, 1 September 1951.
109. *Argus*, 15 September 1951.
110. *Courier Mail*, 24 September 1951.
111. The Liberals had created a referendum campaign committee under the leadership of J.L. Carrick. In New South Wales alone, Menzies was highly active in recording a series of radio broadcasts and providing newspaper advertisements between July and September 1951. Six 5-minute clips were broadcast every day in most major stations across the country and in 26 local stations in NSW between 6–18 of September. A series of four broadcasts of 30 minutes each were played in NSW radio stations. Another series of 'Country Press', (non-urban newspapers) insertions were provided for local papers in various NSW small towns including a total of 18 different cities and 66 different local papers, with a sum total of 288 insertions. SLNSW, Liberal Party of Australia (NSW Branch), MSS2385, f.Y4691, '1951 Referendum- memorandum from J.L. Carrick to the Federal Referendum Campaign Committee', no date.
112. There are several references in the Fitzpatrick papers to people quitting for political reasons. Watson notes in Fitzpatrick's biography that Frank Chamberlain asked to have his name dissociated from the group because he felt it was led by fellow-travelers (Watson, p. 223). Kim Beazley was the Vice President who quit in 1953 over the ineffectiveness of the organisation. NLA, Brian Fitzpatrick Papers, MS4965, Series 1(a), f.1/912-1012, Correspondence, 1950-8, letter from Kim Beazley to Fitzpatrick, 31 September 1953.
113. Fitzpatrick, 'The Unnecessary Police State Bill'.
114. Fitzpatrick, 'The Unnecessary Police State Bill'; Fitzpatrick, 'A Bill for a Police State ... First Report'; Fitzpatrick, 'A Bill for a Police State ... Second Report'.
115. David McKnight offers a fresh perspective on the divisions within the NSW ALP during this period: 'Historians have previously found it difficult to describe what actually occurred within Labour between 1936 (the beginning of the revolt which unseated Lang) and 1940 (split) because of the secrecy of the CPA's undertaking. This has led to a lack of understanding of the internal dynamics of the NSW ALP's confrontation with the rest of the ALP which began with the Easter

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- conference in March 1940. Superficially, the 1940 split resembled previous Labor splits, but the crucial element was in fact a highly ideological grouping of undercover members of the Communist Party who came to lead a mass reformist party following the strategy of the Communist International'. McKnight, p. 169.
116. Gollan, *Revolutionaries and Reformists*, p. 269.
 117. Australia, *Hansard Parliamentary Debates*, 1950, p. 2267.
 118. NLA, Brian Fitzpatrick Papers, MS4965, Series 1 (a), f.1/912-1012, Correspondence, reference to new organisation in memo to all ACCL members, 27 October 1951.
 119. NLA, Brian Fitzpatrick Papers, MS4965, Series 1 (a), f.1/3299-3347, Correspondence Inquiries, letter from Fitzpatrick to C.R. Cochrane', 23 January 1951.
 120. NLA, Brian Fitzpatrick Papers, MS4965, Series 1 (a), f.1/912-1012, General Correspondence, letter from Reverend H.P.V. Hodge to Fitzpatrick, 27 Mach 1950.
 121. NLA, Brian Fitzpatrick Papers, MS4965, Series 1 (a), General Correspondence, letter from Harold Rich to Fitzpatrick, 24 March 1950.
 122. It was the rare Jewish members such as Irving Himmel, a Toronto lawyer, who were active in the early civil liberties associations. Others, including J.L. Cohen (one of Canada's first labour and civil liberties lawyers) provided legal support to the Civil Liberties Association of Toronto (CLAT) but never actually joined the organisation. Himmel was an exception when it came to Jewish individuals on civil liberties groups during this early period. For information on Himmel and Cohen's activities with civil liberties groups, refer to: Lambertson, 'The Dresden Story', pp. 43-82; Laura Sefton MacDowell, *Renegade Lawyer: the Life of J.L. Cohen*, University of Toronto Press, Toronto, 2001.
 123. Ramsay Cook, *Canadian Civil Liberties in Wartime*, MA thesis, Queen's University, 1955, p. 223; Lambertson, 'The Dresden Story', pp. 39-40.
 124. The ACCL should not be considered a truly national civil liberties organisation, although it came closer than any Canadian group. Fitzpatrick formed State-branches of the ACCL in the 1940s and allowed the presidents of each branch to sit on the executive board of the ACCL in an attempt to have input from each region and extend the group's activities beyond Melbourne and Canberra. There is no evidence, however, in either Fitzpatrick's papers or the secondary literature, that the branches accomplished anything or lasted for very long. Financial records do not indicate any funding coming from or being sent out to State branches, nor is there evidence in his correspondence files of much activity on the part of the ACCL branches.
 125. Whitaker and Marcuse, *Cold War Canada*, p. 268-269.
 126. As quoted in Clark, p. 174.
 127. Clément, 'Spies, Lies and a Commission, 1946-8', *Left History*, vol. 7, no.2, Fall 2000, pp. 67-68.
 128. Petryshyn, p. 42.
 129. Watson, p. 92.
 130. NLA, Brian Fitzpatrick Papers, MS4965, series 1 (c), 'Aborigines, correspondence, 1936- 1956- letter from Fitzpatrick to Gordon Birt', 27 May 1946. For information on the ACL and its push for anti-discrimination legislation, refer to: Lambertson, 'The Dresden Story'.
 131. McKnight, p. 144.
 132. McKnight, p. 149.
 133. *Australian Communist Party v. The Commonwealth*, 83 Commonwealth Law Reports, (High Court of Australia, 1951), p. 164.
 134. *Ibid.*, p. 154.
 135. *Ibid.*, p. 232.
 136. *Ibid.*

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137. R. v. Boyer, 7 Criminal Report, Québec Court of King's Bench, 1948, p. 295.
138. Founding members of the Victoria Council for Civil Liberties (VCCL) and the New South Wales Council for Civil Liberties (NSW CCL) in the 1960s had attempted to work with Fitzpatrick and gain his endorsements for the new groups, but he was either unavailable, uninterested or uncooperative (depending on who is asked). In Canada, the four oldest civil liberties associations in Toronto, Vancouver, Montreal and St. John's had few ties with the previous generation. There were none at all in Vancouver with the Vancouver Branch, Canadian Civil Liberties Union and the St. John's group had no predecessor. Frank Scott was one of the few members of the Montreal group to have been active in the 1940s and the 1960s, but he soon left the Ligue des Droits et Libertés when the group became dominated by radical nationalists. In Toronto, Irving Himmel did take part in the early formation of the Canadian Civil Liberties Association, but he also left the organisation soon after its formation. Interview with Kenneth Buckley (NSW CCL) by author, 4 September 2002, Sydney, NSW, transcript held by Dominique Clément; Interview (telephone) with Beatrice Faust (VCCL) by author, 6 September 2002, transcript held by Dominique Clément. NAC, Walter Surma Tarnopolsky Fonds, vol. 14, file 5, Correspondence Personal 1976, letter from Frank Scott to Tarnopolsky, 30 January 1976; Interview with Alan Borovoy by author, 27 May 2002.