

TAKING LIBERTIES

A HISTORY OF HUMAN RIGHTS IN CANADA

Edited by

**David Goutor and
Stephen Heathorn**

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The Rights Revolution in Canada and Australia: International Politics, Social Movements, and Domestic Law

Dominique Clement

Canada was a reluctant human rights advocate by the 1940s. John Humphrey, the Canadian who drafted the Universal Declaration of Human Rights (UDHR), considered his own country's response to the Declaration as "one of the worst contributions" and "a niggardly acceptance . . . the Canadian government did not relish the thought of remaining in the company of those who, by abstaining in the vote, rejected it"¹ According to Humphrey, the "governments attitude toward the Declaration was skeptical; at its extreme, Canadas attitude bordered on hostility."² And yet, within a generation, Canada would become a proponent of human rights at home and abroad.

In this article I forward three arguments: First, there is a conceptual distinction between human rights and civil liberties, and in the post-war period Canadians (and Australians) largely defined rights as civil liberties. Second, human rights had a transformative impact on foreign policy, domestic law, and social movements in Canada beginning in the 1970s. Third, to demonstrate the extent of the rights revolution in Canada, I compare Canada and Australia and argue that the rights revolution was more restricted in the latter. Canadas rights revolution represented a profound break with the past. Weak anti-discrimination laws were replaced with expansive human rights codes across the country and, in 1982, the Constitution was amended to include a bill of rights. A social movement dedicated to the principles of the UDHR was born. Finally, as human rights became a cornerstone of international politics, it began to influence Canadian foreign policy.

Meanwhile, in Australia, the transition from a Cold War discourse of civil liberties to human rights was more restricted in scope. Canada and Australia are ideal comparative case studies because of the extensive legal, social, historical, geographical, and political similarities between the two countries. International treaties informed human rights law in

both countries and, like Canada, Australia enacted an expansive human rights legal regime. But Australian human rights laws were less sophisticated, and there were no self-professed human rights organizations in Australia. The different historical trajectory of these two countries demonstrates the necessity of understanding how ideas of rights evolve within a particular social context. As E. J. Hobsbawm insisted, rights “are not abstract, universal and unchanging. They exist as parts of particular sets of beliefs in the minds of men and women about the nature of human society and the ordering of relations between human beings within it.”³ The study of human rights must begin locally.

The first part of this article briefly documents instances of gross abuse of state power in Canada and Australia in the 1940s. These events launched national debates that, as we will see, exemplified how the language of civil liberties dominated public discourse surrounding rights. The second part briefly notes how the Cold War stifled human rights progress in international politics, as well as domestically in Canada and Australia. The final part of the article examines the 1970s rights revolutions in Canada and Australia. The rights revolution was transformative, and yet at the same time it was contested and profoundly determined by local conditions.

CIVIL LIBERTIES IN POSTWAR CANADA AND AUSTRALIA

The war was a traumatic event for rights. The Defence of Canada Regulations during the Second World War, according to Ramsay Cook, “represented the most serious restrictions upon the civil liberties of Canadians since Confederation.”⁴ In particular, the deportation and disenfranchisement of thousands of Japanese Canadians engendered intense debate across the country.⁵ Australians accepted similar restrictions on their liberties during the war including censorship, internment camps, limits on due process, and bans on numerous organizations. But it was Canadians who first engaged in a postwar national debate on the vulnerability of civil liberties to state abuse.

Igor Gouzenko, a young Russian cipher clerk, left his embassy in Ottawa one night in September 1945 clutching a handful of classified documents under his coat. He eventually made his way to the RCMP where he declared his intention to defect, and presented the police with evidence of a Soviet spy ring. The federal governments response was, to say the

least, excessive: the cabinet used the War Measures Act in peacetime to detain dozens of *suspected* spies, hold them incommunicado, trapped in tiny cells under suicide watch, and subject them to repeated interrogations by the police (who later used the testimony against the accused in court after circumscribing all rights to due process). The event launched a national debate in Canada, and led to the formation of a half-dozen civil liberties associations.

Soon after, the Canadian government received word from San Francisco that the United Nations was drafting a Universal Declaration of Human Rights (UDHR). At the time, Humphrey observed in his diary that “the international promotion of human rights had no priority in Canadian foreign policy.”⁶ Canada initially abstained when the Third Committee of the General Assembly voted on the proposed UDHR. The Australian government, on the other hand, did not share its Canadian counterparts reluctance. H.V. Evatt, a key figure in the Australian Labour Party and president of the United Nations General Assembly, embraced his governments enthusiasm for the Declaration.⁷ The Australians, who were founding members of the Commission on Human Rights and proponents for an active human rights policy at the United Nations, advocated for the inclusion of social, economic, and cultural rights in the UDHR.⁸ In contrast, this issue raised serious concerns in Canada, especially among the Canadian Bar Association and leading members of the federal cabinet.⁹ However, Australia did agree with the Canadian position to restrict the scope of the UDHR. Britain, Canada, the United States, and Australia supported South African Prime Minister Jan Smutss insistence on a domestic jurisdiction clause to prevent the United Nations from intervening in domestic affairs.¹⁰ Pressure from its allies—and the distasteful possibility of voting alongside South Africa, Saudi Arabia, and the communist bloc—ultimately led Canada to support the UDHR in the final vote in 1948. Officially, the federal government insisted that it was concerned about violating provincial jurisdiction.¹¹ Privately, the acting prime minister, Louis St. Laurent, was far more apprehensive that the UDHR could be used “to provoke contentious even if unfair criticism of the Government.”¹²

Australia’s Labour Party was defeated a year later and replaced with Robert Menziess Liberal Party government. Menzies was, at best, luke-warm toward human rights. In fact, fear and hatred of communism led to a national debate in Australia about how far the state should be

permitted to restrict rights. The Menzies government attempted twice to ban the Communist Party of Australia, first through legislation in 1950, which was defeated in court, and a year later with a referendum.¹³ In each case, the government proposed to declare the party an unlawful association and to dissolve any organizations (including unions) suspected of being communists. The Governor General simply had to declare a person “communist” to suspend them from holding office in a union, the public service, or the military. The onus of proof was placed upon the accused, and the penalty for violating the law was five years in jail. Debates raged in the House of Commons and the media throughout 1950 and 1951. The referendum failed, albeit barely: 50.5 percent voted “no.” Rights became prominent public issues in Australia during these debates.¹⁴ As in Canada, Australians responded to these events by forming several civil liberties associations.¹⁵

What stands out most about postwar debates in Canada and Australia is that the term *human rights* was rarely employed.¹⁶ The Gouzenko affair dominated Canadian newspaper headlines and editorials between February and April 1946. The most common theme was the states abuse of the suspects civil liberties. Similarly, Members of Parliament as well as non-governmental organizations framed their concerns using the language of civil liberties. Critics routinely made reference to British tradition. A typical example was one author writing for the *Dalhousie Review* who suggested that the government “created popular sympathy for the accused and erred greatly in not taking scrupulous care that the established practices of British justice were followed.”¹⁷ In Australia, rights talk was even more laden with references to British justice. The Australian Council for Civil Liberties (ACCL) published flyers denouncing the dissolution bill on the basis that it was offensive to the “fundamental civil liberties in the British democracies.”¹⁸ During the referendum campaign a group of self-declared distinguished citizens published an advertisement urging citizens to vote against the initiative on the basis that the proposal “offends against long-standing British principle.”¹⁹ Parliamentarians often made reference to “abandoning British principles” or “inverting the normal processes of British Justice.”²⁰

The term *human rights* had yet to gain popular currency in either country. Instead, Canadians and Australians were possessed of civil liberties, and popular discourse was often rooted in references to British liberties. The first non-partisan associations dedicated to promoting

rights for all citizens were formed in both countries in the 1930s: the ACCL and the Canadian Civil Liberties Union (CCLU). The Gouzenko affair and the Communist Party Dissolution Act spawned similar organizations.²¹ There were no self-professed “human rights” associations. The constitutions of the CCLU and the ACCL defined rights as civil liberties, and in particular civil and political rights.²² Civil liberties organizations campaigned for traditional British liberties as they understood the principles: freedoms of speech, association, assembly, and religion, press; due process; and non-discrimination.

Neither country had a bill of rights or any human rights laws. Saskatchewan passed a provincial Bill of Rights in 1947, which was only the second anti-discrimination law in Canadian history. The statute, however, was narrowly constructed. It recognized freedoms of speech, assembly, religion, and association, and due process, while at the same time prohibiting discrimination solely on the basis of race, religion, and national origin (opinion was divided, however, over whether or not Saskatchewan had the jurisdiction to legislate on fundamental freedoms).²³ Even by the late 1950s there was only a scattering of weak anti-discrimination statutes in Canada. These laws were largely ineffective: they were rarely enforced, few people were aware they existed, and the legislation was poorly drafted.²⁴ Premier Ernest Manning of Alberta expressed a common belief at the time when he rejected demands for anti-discrimination legislation on the grounds that the “government prefers to rely upon those individual rights and privileges as established by the Common Law of England and the British Commonwealth.”²⁵ Both countries debated a constitutional bill of rights, but to no avail. The Australian Labour Party initiated a referendum in 1944 to add protections for speech and religion to the constitution.²⁶ In Canada, Parliament formed committees in 1947, 1948, and 1950 to consider a bill of rights. The Australian referendum failed, and the Canadian committees were unable to come to a consensus. Discussions surrounding a bill of rights also focused almost exclusively on civil and political rights.

Moreover, Humphrey was correct when he pointed out that human rights was not a foreign policy priority for Canada. The same was true for Australia. Neither country was dedicated to promoting human rights abroad despite some initial commitments before the war, including participation in the League of Nations and the International Labour Organization (ILO). Australia and Canada had joined the other Western

powers in opposing Japan's attempt to include a section on racial discrimination in the League of Nations's Charter. "The early Canadian attitude toward United Nations involvement with rights," explains Cathal Nolan, "was clearly apathetic, and even a little smug. Ottawa considered the US proposal on human rights wrongheaded at best, and at worst as constituting an invalid interference in the internal affairs of states."²⁷ The Menzies government, which governed until 1972, was noticeably hostile to international human rights treaties, if not to the United Nations itself.²⁸ Canadian and Australian foreign policy in the 1940s and 1950s privileged state sovereignty to the detriment of human rights intervention.²⁹ Canada, for example, opposed intervention over human rights abuses in South Africa in 1955 and Nigeria in 1968 on the basis of respecting state sovereignty.³⁰

Inheriting the British tradition of civil liberties had implications for both countries. Social movements, political leaders, and the media by the 1950s largely defined rights as civil and political rights. Even the Australian Labour Party, which supported the inclusion of social and economic rights in the UDHR, did not seek similar provisions for the Australian constitution. Another tradition inherited from Britain was parliamentary supremacy. In justifying his government's decision to unilaterally suspend the rights of suspected spies, Minister of Justice J.L. Illesley claimed 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."³¹ The Menzies government routinely appealed to parliamentary supremacy throughout its campaign to ban the Communist Party of Australia. Paul Hasluck, a Member of Parliament, insisted that "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."³² A belief in the supremacy of Parliament further contributed to opposition in both countries to a bill of rights.³³ Stuart Garson, the Canadian minister of justice in 1950, perfectly captured this sentiment in a memorandum to the federal cabinet: "If we agree by an international Covenant to submit to restrictions upon our Parliamentary sovereignty ... we will have a rather difficult time arguing within Canada that we are not warranted in submitting to the restrictions upon our Parliamentary sovereignty which

a bill of rights would involve, for the protection of the civil liberties of our Canadian citizens”³⁴ Similarly, Menzies rejected the Labour Party's attempt in 1944 to amend the constitution, arguing that “we are British people and we do not need to be reminded that we have inherited these established principles of government from our English ancestors, and that we do not need some solemn piece of writing in a Constitution to make us completely determined that our inherited freedoms will not be taken away from us by despots or by elected persons.”³⁵

The United States, Great Britain, and France shared Canada's and Australia's concerns about the UDHR.³⁶ The major powers did not see human rights as a foreign policy priority.³⁷ Even the International Labour Organization had never used the language of human rights in its conventions by this time.³⁸ Human rights simply lacked popular appeal in the postwar period: international lawyers overwhelmingly rejected it as a basis for international law; anti-colonial movements embraced human rights, not to promote individual freedom, but for the purposes of state formation; the United Nations did little to promote human rights; and social movements had yet to embrace human rights as a vision for social change.³⁹

COLD WAR HUMAN RIGHTS

The Cold War stifled attempts to promote human rights as a cornerstone of international politics.⁴⁰ The United Nations “became a surrogate battlefield for the Cold War, and co-operation between the West and the Soviet bloc deteriorated. The Cold War created ideological arguments over the meaning and determination of which rights deserved entrenchment into the organization's many conventions and treaties.”⁴¹ Several recent studies on the history of human rights law and politics have concluded that, until the 1970s, the Cold War had a dampening effect on human rights progress. “The [Great] Powers started to see human rights,” insists Mark Mazower, “as a weapon to be deployed against each other.”⁴² According to Julie Mertus, “the ideological tug and pull of the Cold War impaired human rights enforcement efforts, but human rights standard setting shuffled along in the 1950s and 1960s, emerging as a viable political force in the 1970s and 1980s amid a proliferation of international human rights conferences, treaties, and declarations.”⁴³ The priorities of international politics eroded the moral force of universal human rights as “the expedient demands of the Cold War were used

to justify glaring inconsistencies of policy on human rights, democratic practice, arms supplies, trade, aid, and intervention.”⁴⁴ Human rights, as Kathleen Mahoney argues, were used to advance global strategic interests: “By and large, each side used human rights as a tool for finding fault with and imputing immorality to the other ... while turning a blind eye to human rights abuses within their own spheres of influence.”⁴⁵ Cold War politics further undermined opportunities for grassroots mobilization and transnational activism.⁴⁶

The Cold War had a similar impact on human rights in Canada and Australia. The Gouzenko affair, which is often cited as the event that launched the Cold War, and the Communist Party Dissolution Act were clearly part of a global conflict. Only a handful of civil liberties associations were active in Canada and Australia by the 1950s, and yet even these few groups were bitterly divided between communists and social democrats (the latter allied with liberals). During the Gouzenko affair and in response to the Communist Dissolution Act, civil liberties associations were oddly silent given the obvious attack on individual rights. Fears of being associated with communism not only silenced potential critics, but also made co-operation among activists extraordinarily difficult.⁴⁷ Civil liberties organizations in both countries became defunct by the 1950s. Australia's ACCL was still active in the 1950s, but it was a shadow of its former self. Ideological divisions undermined attempts to form a national civil liberties association in both countries.⁴⁸ Federal and state governments routinely dismissed concerns surrounding human rights abuses, including their own brand of McCarthyism and vicious attacks against trade unionists, by accusing critics of being soft on communism (in Australia, this included purges within the Labour Party, especially in New South Wales).⁴⁹ There was no appreciable change in foreign policy, which in both countries was largely dictated by Cold War allegiances. Despite its initial support for the UDHR, Australia shifted “from enthusiastically advocating a range of economic and social rights to attempting to minimise the rights, from insisting on government responsibility in the field to emphasising an individual's correlative duties.”⁵⁰ In this way a discourse of civil liberties prevailed during the Cold War, and not the more expansive human rights discourse embedded in the UDHR.⁵¹

But the Cold War began to wane in the 1970s. The first Canadian prime ministerial visits to China, the Soviet Union, and Cuba, as well as several precedent-setting trade agreements, signalled a rapprochement

with communist nations. Meanwhile, the Australian Labour Party, during its brief stint in power between 1972 and 1975, opened diplomatic relations with China and East Germany, expanded wheat shipments to the former, and withdrew troops from Vietnam. And the worst excesses of domestic Cold War politics in both countries appear to have dissipated by the 1970s. Communist purges within trade unions and the civil service were exhausted; several of the most outrageous laws restricting basic rights were eliminated; and political debates no longer drew as heavily on Cold War rhetoric.

Samuel Moyn suggests that human rights came to the forefront of international politics because other utopian ideals, such as communism, had become discredited: "It was, instead, only in the 1970s that a genuine social movement around human rights made its appearance, seizing the foreground by transcending official government institutions, especially international ones."⁵² This transformation in international politics took the form of action and rhetoric premised on the belief that citizens and governments had a legitimate interest in the human rights of people in other states. Examples of this transformation abound: the Carter administrations promotion of human rights in American foreign policy; the first US State Department annual human rights reports; the emergence of Amnesty International and Helsinki Watch; international human rights treaties, including the Helsinki Accords; the first postwar international humanitarian effort (in Biafra); the mobilization of transnational advocacy networks surrounding human rights abuses in South America; the Fraser Committee Congressional hearing on American support for countries responsible for human rights violations; Soviet dissidents and the emergence of human rights movements in Russia; the Ford Foundations initial forays into human rights promotion abroad; the stirrings of a global campaign against apartheid in South Africa; and the proliferation of human rights policies in individual countries' foreign aid programs. As a result of these and similar developments beginning in the 1970s human rights "reached consensual (prescriptive) status on the international level."⁵³ Inevitably, these developments were to have an impact domestically on Canada and Australia, but in dissimilar ways.

CANADA AND AUSTRALIA'S RIGHTS REVOLUTIONS

Canadians began to experiment with anti-discrimination legislation as early as the 1940s, and several provinces introduced legislation in the

1950s banning discrimination on the basis of race, religion, and ethnicity in employment and accommodation. However, it became quickly apparent that the laws were ineffective. Ontario set a new standard in 1962 with its Human Rights Code. The legislation incorporated existing anti-discrimination laws into a single statute and established a commission to enforce the law. It was a landmark achievement, and would never have happened without the efforts of social movement activists. Organizations representing Jews, unionists, African Canadians, churches, and a host of others led the movement for human rights legislation.⁵⁴ One of these groups, the Association for Civil Liberties, morphed into the Canadian Civil Liberties Association in 1964. Two similar organizations had been formed in the previous two years: the British Columbia Civil Liberties Association (1962, Vancouver) and the Ligue des droits de l'homme (1963, Montreal). The emergence of these organizations heralded the beginning of a new generation of non-partisan rights associations.

The International Year for Human Rights (1968) was a watershed in Canada. It led to the formation of numerous self-professed "human rights" associations.⁵⁵ Unlike *civil liberties* organizations, which restricted their work to civil and political rights, *human rights* organizations embraced the broader principles of the UDHR. The latter's more expansive interpretation of human rights led to bitter debates on prominent issues. For instance, whereas civil liberties groups fought to remove unfair restrictions on citizens who received social assistance (e.g. the prohibition on single women from having male houseguests), human rights groups argued that individuals had a right to economic security, and could not exercise their political and civil rights without proper resources. Such disagreements were evident on numerous issues, such as pornography, immigration, sexual assault laws, and hate speech. These ideological divisions had a tangible impact: for many years the largest national rights association in the country was awkwardly called the Canadian Federation of Civil Liberties and Human Rights Associations. No organization more fully symbolized these divisions than the Ligue des droits de l'homme. The Ligue, which began as a civil liberties association (its original English name was the Quebec Civil Liberties Union), explicitly embraced a human rights platform in 1971. The Ligue's new mandate was to adapt to the changes occurring within Quebec society and to consider the unique problems facing the poor, women, elderly, youth, and ethnic minorities. Instead of concerning themselves with individual rights, the Ligue would

achieve equity by improving the social conditions in which those rights were exercised.⁵⁶

An astounding number of social movements had emerged by this time. The student movement and the New Left became a powerful force for social change; the number of womens groups in British Columbia alone increased from two in 1969 to over one hundred in 1974; the first gay rights organizations were formed in Vancouver and Toronto in the 1960s; and the founding of Greenpeace in 1971 symbolized the birth of the modern environmental movement. There were at least four national Aboriginal associations and thirty-three provincial organizations by 1970.⁵⁷ These movements employed the language of human rights. Meanwhile, Christian churches shifted toward humanitarian and rights-based work overseas, and formed international NGOs to promote human rights abroad. One project, Ten Days for World Development, was especially successful in generating support within Canada for a rights- and humanitarian-based foreign policy.⁵⁸

The proliferation of social movements was a defining feature in much of the Western world. Although the Australian Council for Civil Liberties was defunct by the 1960s, the gap was filled with several new civil liberties associations beginning with the New South Wales Council for Civil Liberties (1963).⁵⁹ There was also an abortive attempt at a national association called the Australia Civil Liberties Council. But there were no human rights associations comparable to the organizations that appeared in Canada. The International Year for Human Rights was a muted affair in Australia.⁶⁰ Throughout the 1970s, more than forty civil liberties and human rights associations emerged in Canada, compared to only a handful of civil liberties groups scattered across Australia.⁶¹

For rights advocates in Canada, a key objective during this period was a constitutional bill of rights. On this issue they had the support of Pierre Elliot Trudeau, who had become prime minister in 1968.⁶² The federal government appointed a Special Joint Committee on the Constitution in 1970 to consider, among other things, the viability of a bill of rights. Although the attempt ultimately failed, the hearings symbolized subtle changes in political discourse. Hardly anyone had raised an objection to the 1960 federal statutory Bill of Rights on the basis of restricting parliamentary supremacy, and the Special Joint Committee on the Constitution rejected the principle as an obstacle to a bill of rights: "Parliamentary sovereignty is no more sacrosanct a principle

than is the respect for human liberty which is reflected in a Bill of Rights. Legislative sovereignty is already limited legally by the distribution of powers under a federal system and, some would say, by natural law or by the common law Bill of Rights.”⁶³ There was also the beginning of a shift in foreign policy. A 1970 federal White Paper recommended a more vigorous and positive approach to human rights at the United Nations: “There is an expectation that Canada will participate in international efforts in the human rights field on a more extensive and meaningful scale than in the past.”⁶⁴

A similar rights revolution was underway in Australia in the 1970s. Whereas every Canadian province had introduced a human rights statute by 1975, the Australia government had only just begun. The federal government used its external affairs power under the constitution to pass the Racial Discrimination Act in 1975. Unlike Canada, where the provinces passed their own legislation, the federal government in Australia imposed legislation on local states.⁶⁵ State leaders vigorously objected to the law and accused the federal government of violating state jurisdiction.⁶⁶ Still, the Racial Discrimination Act, which survived a court challenge, was only a tentative step. A more expansive bill, the Human Rights Act, was introduced in 1975 but it never became law.

Other countries were also busy enacting human rights legislation.⁶⁷ The United Kingdom, for example, established Racial Equality and Equal Opportunities commissions in 1971 and 1975 respectively. Civil rights legislation was also introduced at the state and federal level in the United States. In fact, there was a proliferation of human rights institutions across the globe in the 1970s. Thomas Pegram describes the diffusion of human rights institutions as a “contagion effect”; a process emerging from a “complex domestic, regional, and international interaction of actors, arenas, and modalities of diffusion” that resulted in a “wave phenomenon of varying intensity across regions” beginning in Europe, Australia, and North America.⁶⁸

By 1975 the Canadian government was under intense pressure from international institutions, a domestic human rights movement, and a maturing legal profession to ratify human rights treaties.⁶⁹ Canada participated in the negotiations that led to the Helsinki Accords in 1975 with the Soviet Union, which among other things committed each country to a set of human rights principles.⁷⁰ In the same year, a federal-provincial Continuing Committee of Officials on Human Rights was

created to consult over international treaties.⁷¹ After securing provincial consent, Canada acceded to the International Covenant on Civil and Political Rights, as well as the International Covenant on Economic, Social and Cultural Rights, in 1976.

Canada's new international commitments and activities created a unique opportunity for parliamentarians to become involved in foreign affairs. In the early 1970s, MPs tended to respond to human rights violations in Eastern Europe with vague calls for self-determination or the recognition of rights of minorities. MPs developed a more sophisticated approach, however, as a result of their participation in an Inter-parliamentary Union conference leading up to the negotiations for the Helsinki Accords and the subsequent Belgrade Review conference. MPs drew on the language contained in the Accords to introduce resolutions in Parliament dealing with family reunification, free movement of people, religious freedom, and other equally precise reforms that demonstrated a far greater understanding of the issues. MPs also participated in increasing numbers in international human rights conferences as part of official Canadian delegations to the United Nations and as members of various monitoring groups abroad. Over time many MPs gained valuable experience and expertise on human rights issues, and they brought this knowledge to Parliament where they continued to pressure the federal government to integrate human rights in foreign policy.⁷² A private members bill was introduced in 1975 to prohibit foreign aid to countries with poor human rights records. The bill drew attention to the human rights component of Canadian foreign policy and forced the government to defend and elaborate its aid policies in public.

Under Menzies and his successors, the Australian federal government had been skeptical about international human rights commitments. Menzies, unlike Evatt and other members of the Labour Party, had never accepted economic and social rights as human rights. Australian foreign policy instead framed human rights as civil and political rights, and routinely denounced communist countries for restricting these rights. Despite being a founding member of the United Nations Human Rights Commission, Australia left the commission in 1956. The Liberal Party recognized the Cambodian regime under Pol Pot, continued to trade with China, and recognized Indonesia's claims over East Timor following the invasion. It was not until 1972 when "Gough Whitlam became prime minister [Labour Party] that Australia became

formally integrated into the international human rights regime.⁷³ The Whitlam government initiated widespread domestic reforms, including the Racial Discrimination Act, and moved quickly to ratify United Nations human rights treaties as well as several ILO conventions. When the Labour Party returned to power in 1983 it ratified the Convention on the Elimination of All Forms of Discrimination against Women, passed the Sex Discrimination Act, removed most of the previous government's reservations on the International Covenant on Civil and Political Rights, and established a human rights section in the Department of Foreign Affairs and Trade.⁷⁴ In this way, as Ann Kent argues, Australia was a late-comer to international human rights politics in that human rights was not integral to Australian bilateral relations until the 1980s.⁷⁵ Still, like Canada, there was a relationship between domestic and foreign policy. Domestic reforms promoted changes in foreign policy that in turn provided the impetus for domestic reforms:

First was the impact of the new politics of the post-Cold War era, wherein human rights assumed greater prominence in line with Australia's greater international visibility. Second was the close interaction between human rights in Australia's domestic policies and foreign policies. By definition, the international human rights regime connects international to domestic policy by affording multilateral human rights monitoring bodies oversight over a state's domestic human rights conditions. Historically, the more confidence Australia has shown in tackling its own domestic human rights problems, the more involved it has been with international bodies and the more accessible it has been to criticism.⁷⁶

As human rights became a cornerstone of international politics, Canada and Australia responded with concrete measures. The Canadian government imposed restrictions on South Africa (banning athletes entering Canada, removing trade commissioners, cancelling export credits, prohibiting arms sales); accepted a higher number of refugees following crises in Chile and Uganda (1973); inserted a section on refugees to the immigration law (1976); withdrew aid from the Amin regime in Uganda; imposed limited economic measures (including bans on exporting food and credits) to Poland and the Soviet Union in 1977; and suspended aid to Chile and Vietnam, and later Guatemala and El Salvador in 1981.⁷⁷ The government also accepted for the first time, in principle, that foreign aid should be linked to human rights. Australia was also engaged in using sanctions as

a foreign policy tool to promote human rights. The Liberal coalition government of Malcolm Fraser (1975-1983) “abruptly brought an end to the previous [Liberal government] equivocation on the South African question, allying itself squarely behind the ‘front-line’ African states and in support of Commonwealth initiatives to end apartheid.”⁷⁸ Australia formally imposed sanctions on South Africa in 1983. Two years earlier, in response to violent abuses under the Pol Pot regime, the Australian government had “de-recognized” the Cambodian regime.⁷⁹ True, neither country was above reproach: Canadian foreign aid was re-introduced for Guatemala and El Salvador, and Australia never allowed China’s dismal human rights record to affect trade. Even under Gough Whitlam, the Australian government rarely raised concerns surrounding other countries’ human rights records.⁸⁰ Still, a change was clearly underway.

The most salient illustration of the rights revolution was domestic legal reform. When the federal Human Rights Act came into effect in 1977, comprehensive human rights legislation covered every jurisdiction in Canada.⁸¹ Human rights legislation expanded the scope of pre-existing laws from ethnicity, gender, religion, age, and nationality by incorporating sexual harassment, disability, pregnancy, criminal record, family status, and (over time) sexual orientation. Specially trained human rights officers were hired to investigate complaints and to attempt informal conciliation. When that failed, formal boards of inquiry could impose settlements such as requiring offenders to pay a fine, offer an apology, reinstate an employee, or agree to a negotiated settlement. Human rights commissions, unlike courts, were specialized government agencies that were efficient and accessible, and bore the cost of investigating and resolving complaints. They were also given the resources to pursue vigorous human rights education programs.

The Canadian human rights legal regime was among the most sophisticated in the world. Equality commissions in the United Kingdom and the United States, for example, had far more restrictive mandates and arguably less effective enforcement mechanisms. Despite the proliferation of human rights laws since the 1970s, few of these models incorporated all the strengths of the Canadian system: professional human rights investigators, public education, promoting legal reform, representing complainants before formal inquiries, jurisdiction over public and private sectors, a focus on conciliation over litigation, independence from the government, and an adjudication process as an alternative to the courts.

Legislating prohibitions on employers and merchants from discriminating was simply one more instance of how the rights revolution was contributing to a departure from British tradition.⁸² Even the content of these laws represented a more expansive conception of rights. Several jurisdictions prohibited discriminatory hate speech, recognized a mandate to address systemic discrimination, incorporated the concept of equal pay for work of equal value, and imposed a duty to accommodate on employers and service providers. The government of Quebec went so far as to incorporate economic and social rights in its human rights legislation, and to ban discrimination on the basis of social condition. And if the creation of a sophisticated statutory human rights legal regime was not enough to demonstrate the impact of the rights revolution, the entrenchment of a constitutional bill of rights in 1982 constituted an entirely new direction in Canadian law. Moreover, the Charter of Rights and Freedoms recognized gender equality, multiculturalism, Aboriginals, language, and education. Considering the lack of almost any effective statutory or constitutional recognition of human rights before the 1970s, changes in human rights law were truly transformational.⁸³

According to Maxwell Yalden, the former chief commissioner of the Canadian Human Rights Commission and a member of the United Nations Commission on Human Rights, the Canadian model had few peers: “It should be noted that it is a particular type of commission that has similar, sister agencies in countries like Australia and New Zealand. But nothing of the sort exists, for example, in France or other European countries.”⁸⁴ The Australian human rights legal regime, although it took longer to emerge, was akin to its Canadian counterpart. But it was the Australian federal government, using its power to implement treaties and override state jurisdiction, that established a human rights legal regime (although South Australia, New South Wales, and Victoria had passed a few minor anti-discrimination laws in 1975 and 1977).⁸⁵ The first federal anti-discrimination statute, the Racial Discrimination Act, was followed by the Human Rights Act (1981) and the Sex Discrimination Act (1984).⁸⁶ International treaties provided the framework for these statutes.⁸⁷ Individual states later introduced more comprehensive legislation. By the mid-1980s, Australia had become “one of the few western industrialized countries of the world to operate a [national human rights institution] which has powers of monitoring, policy development, education, and complaint handling. Most other institutions, with a notable

exception in Canada, have a more narrow range of functions such as consultation and advice, reviewing maladministration in the role of an ombudsman, or conducting education programs.”⁸⁸

And yet legal reform in Australia, albeit more advanced than in most other countries, fell short of the Canadian model. The Australian human rights legal system emerged from the federal government whereas the Canadian human rights regime was the result of a sustained grassroots campaign and enjoyed popular support among provincial and federal leaders. The latter also had an established human rights system by the 1970s, whereas Australia’s human rights state came to fruition only in the 1980s.⁸⁹ Several Australian jurisdictions implemented more restrictive legislation that did not cover key grounds (e.g., religion or sexual orientation), and unlike Canada, human rights legislation in Australia was less uniform. Australian human rights legislation was also poorly enforced: the federal commission had to apply to a court to enforce a remedy.⁹⁰ The result was a far more tedious and expensive process, which was precisely why the Canadian system allowed formal inquiries to enforce remedies.⁹¹ And there were other notable differences. Quebec included economic and social rights in its human rights legislation; no similar law existed in Australia. Canadians also entrenched an expansive bill of rights in the Constitution; Australians rejected attempts to entrench rights in their constitution in 1944 and 1988.

CONCLUSION

No two countries offer a better comparison than Australia and Canada in exploring the influence of human rights on law, politics, foreign policy, and social movements. The two nations share a common history as former British colonies. Both countries are federations with parliamentary systems; possess a small population (with a significant immigration base that is multilingual and multicultural) spread out across an enormous land mass; inherited a common law legal system; have a history of conflict with the indigenous population; and have a well-educated, Western, and predominantly English-speaking populace. They are also “middle powers” and have sought to strengthen the United Nations to offset the influence of the great powers.

Each country experienced a rights revolution that came to fruition in the 1970s. They largely abandoned a limited conception of rights as civil liberties and embraced a more expansive human rights ideal.

International human rights treaties had an impact on Canadian and Australian law and political discourse.⁹² Both countries endeavoured to address human rights in foreign policy. And yet there were notable differences. There were no self-professed human rights associations in Australia. Human rights laws in Australia were not as comprehensive as the Canadian model. Australia was slower to integrate human rights in foreign policy and domestic law. There was no Australian bill of rights. What accounts for the differential impact of human rights in a local context?

French Canadians played a critical role in the politics of human rights. Quebec's leading rights association, the *Ligue des droits de l'homme*, was a powerful advocate for collective as well as social, economic, and cultural rights. Normand Caron, the *Ligue's* executive director in 1975, believed that the *Ligue's* main contribution to the national movement was to challenge anglophones' definition of human rights as civil and political rights.⁹³ No other social movement organization played a more central role in drafting the Quebec Charter of Human Rights and Freedoms which, as noted above, was far more expansive than any Australian human rights statute. Finally, the presence of a powerful national minority concerned with culture and language rights helps explain the inclusion of language rights and education in the Charter of Rights and Freedoms.⁹⁴ In fact, as some scholars have argued, the Charter itself was created in response to the Quebec separatist movement.⁹⁵

Canadian and Australian federalism, especially in the division of powers, was another distinguishing factor. The Canadian federal government was prohibited from imposing treaty obligations on the provinces. The Australian federal government was not similarly constrained. But local states in Australia fiercely resisted what they perceived to be an invasion of their constitutional jurisdiction, and this may have restricted the federal government's vision for human rights law. Perhaps for this reason Australian human rights laws were never as progressive as their Canadian counterparts. One of the curious distinguishing features in the history of human rights law in the two countries is that such laws had widespread partisan support in Canada: Liberal, New Democratic, Progressive Conservative, and Social Credit Party governments introduced anti-discrimination laws. In Australia, except for the 1977 Victoria Equal Opportunity Act and the federal Human Rights Commission Act (1981), the Labour Party was responsible for passing every human rights

law (and instigating referendums in 1944 and 1988) at the state and federal level.⁹⁶ In addition, the Canadian federal system did not include a powerful Senate whereas in Australia fierce partisan conflicts between the Senate and the House delayed the introduction of federal human rights legislation. It is also worth noting that the “White Australia” policy continued to inform immigration policy into the 1970s. The conditions that facilitated the White Australia policy may have contributed to opposition (particularly among state leaders) to anti-discrimination legislation in the 1970s.

A few other differences between the two countries are worth noting. Two political parties—one Liberal and the other Conservative—dominated federal politics in each country during this period. However, Conservatives governed almost continually in Australia between 1949 and 1983 whereas Liberals dominated Canadian federal politics between 1935 and 1984. The Australian federal government eschewed multilateralism as well as economic and social rights.⁹⁷ In contrast, Liberal governments in Canada, with strong support among French Canadians, favoured multilateralism rather than focusing on ties with the Commonwealth. The Canadian government also provided an unprecedented level of funding for social movements beginning in the late 1960s (which was also partly a reaction to the independence movement in Quebec). Whereas Australian civil liberties associations rarely received state funding, almost every rights association in Canada depended on government grants. Celebrations surrounding the International Year for Human Rights in Canada received generous federal funding. In addition, Canada's divided legal system (French civil law and English common law) facilitated the incorporation of foreign legal precedents into domestic law. And, of course, any amendments to the Australia constitution had to be approved through a referendum, which has proven to be a greater obstacle to a bill of rights than in Canada, where federal and provincial leaders negotiated an agreement. Also, because of its geopolitical situation, there were unique aspects to Canadian foreign policy. The Helsinki negotiations, which did not involve Australia, provided an opportunity for Canadian parliamentarians to place human rights on the agenda for foreign policy.

Finally, although impossible to quantify, American cultural and political influence likely contributed to developments in Canada.⁹⁸ The most visible manifestation was the Jewish Labor Committee. The

organization, which played a critical role in the campaign for New York's 1945 precedent-setting anti-discrimination law, was the template for a similar organization that was formed in Ontario in 1937. The Canadian Jewish Labour Committee soon had affiliates throughout the country and, more than any other organization, has been credited with leading the campaigns for human rights legislation in Canada many years before Australia."

Although the countries' histories are dissimilar, the rights revolution nonetheless transformed both Canada and Australia. Until the 1970s, the Cold War defined international politics and had a dampening effect within states. Civil liberties organizations fought among themselves, and often fell apart because of internecine ideological conflicts. Governments used the threat of communism to justify human rights abuses at home. Foreign policy priorities, in the context of the Cold War, favoured state sovereignty over human rights. Cold War imperatives, however, do not appear to have had the same influence by the 1970s. Canada and Australia introduced human rights legislation, social movements flourished, politics was changing and support for a constitutional bill of rights was growing, and human rights had become a factor in foreign policy. Human rights rhetoric became increasingly pervasive in public debate. Meanwhile, several international human rights treaties were implemented and international institutions became a forum for debating human rights, holding states accountable for human rights violations, and setting new human rights standards for states. What had begun as a debate surrounding a vague declaration of principles in 1948 had become, by the 1970s, a powerful imperative.

NOTES

1. A.J. Hobbins, "Eleanor Roosevelt, John Humphrey and Canadian Opposition to the Universal Declaration of Human Rights: Looking Back on the 50th Anniversary of the UDHR," *International Journal* 53, no. 2 (1998): 338.
2. William A. Schabas, "Canada and the Adoption of the Universal Declaration of Human Rights," *McGill Law Journal* 43, no. 2 (1998): 406.
3. E.J. Hobsbawm, "Labour and Human Rights," in *Worlds of Labour: Further Studies in the History of Labour*, ed. E.J. Hobsbawm (London: Weidenfeld and Nicolson, 1984), 299.
4. Ramsay Cook, "Canadian Freedom in Wartime," in *His Own Man: Essays in Honour of A.R.M. Lower*, ed. W.H. Heick and Roger Graham (Montreal: McGill-Queens University Press, 1974), 38.
5. For more on these events, see Stephanie Bangarth, *Voices Raised in Protest: Defending North American Citizens of Japanese Ancestry, 1942-49* (Vancouver: UBC Press, 2007).
6. As quoted in Schabas, "Canada and the Adoption of the Universal Declaration of Human Rights," 424. Schabas also notes: "A 112-paragraph document entitled 'Views of Canada on

- Matters Before the United Nations' prepared by External Affairs bureaucrats for the Assembly did not even mention the Declaration.”
7. Jennifer Amos argues that debates surrounding the UDHR were not defined by Cold War allegiances. Australia, for example, advocated for social, economic and cultural rights. Jennifer Amos, “Embracing and Contesting: The Soviet Union and the Universal Declaration of Human Rights, 1948-1958,” in *Human Rights in the Twentieth Century*, ed. Stefan-Ludwig Hoffmann (Cambridge: Cambridge University Press, 2011), 149. On Australia and the UDHR, see Annemarie Devereux, *Australia and the Birth of the International Bill of Human Rights, 1946-1966* (Sydney: The Federation Press, 2005).
 8. Ann Kent, “Australia and the International Human Rights Regime,” in *The National Interest in the Global Era: Australia in World Affairs, 1996-2000*, ed. James Cotton and John Ravenhill (Melbourne: Oxford University Press, 2001), 259.
 9. Canada, Parliament, Senate, *Special Committee on Human Rights and Fundamental Freedoms*, 1950; Hobbins, “Eleanor Roosevelt, John Humphrey and Canadian Opposition to the Universal Declaration of Human Rights.”
 10. Mark Mazower, “The Strange Triumph of Human Rights, 1933-1950,” *The Historical Journal* 47, no. 2 (2004): 394-95. On Australia’s opposition to interference in domestic affairs, see also Devereux, *Australia and the Birth of the International Bill of Human Rights, 1946-1966*, 204-15.
 11. Robert Bothwell, *Alliance and Illusion: Canada and the World, 1945-1984* (Vancouver: UBC Press, 2007), 21.
 12. Schabas, “Canada and the Adoption of the Universal Declaration of Human Rights,” 427.
 13. Frank Cain and Frank Farrell, “Menzie’s War on the Communist Party, 1949-1951,” in *Australia’s First Cold War, 1945-1953*, ed. Ann Curthoys and John Merritt (Sydney: George Allen & Unwin, 1984), 131-33.
 14. On the Communist Party Dissolution Bill and the referendum, see Dominique Clement, “It Is Not the Beliefs but the Crime That Matters: Post-War Civil Liberties Debates in Canada and Australia,” *Labour History (Australia)* May, no. 86 (2004); Cain and Farrell, “Menzie’s War on the Communist Party, 1949-1951.”
 15. National Library of Australia, Brian Fitzpatrick, MS4965, Series 1 (a), f.1/912-1012, correspondence inquiries, letters from Fitzpatrick, 1951; f. 1/3299-3347, general correspondence, letters to Fitzpatrick, 1950.
 16. On the Gouzenko Affair, including media coverage, parliamentary debates, and the role of civil liberties associations, see Dominique Clement, “The Royal Commission on Espionage and the Spy Trials of 1946-9: A Case Study in Parliamentary Supremacy,” *Journal of the Canadian Historical Association* 11, no. 1 (2000), and “Spies, Lies and a Commission, 1946-8: A Case Study in the Mobilization of the Canadian Civil Liberties Movement,” *Left History* 7, no. 2 (2001); www.HistoryOfRights.com.
 17. “Topic of the Day,” *Dalhousie Review* 26: 96-98 (April 1946).
 18. Australian Council for Civil Liberties. “The War and Civil Liberties.” 1 (December 1940). [A pamphlet published by the ACCL].
 19. “We Oppose these Gravely Disturbing Proposals.” *Argus*, September 15, 1951.
 20. One MP went so far as to suggest that it was the most “offensive bill introduced in the English speaking world.” Australia, *Hansard Parliamentary Debates*, 1951, vol. 15, 1213-4, 1238, 1266. Mitchell Library. Communist Party of Australia papers, MSS 5021, f. 103 (155), Democratic Rights Council opposed referendum, 1951.
 21. Robin Gollan, *Revolutionaries and Reformists: Communism and the Australian Labour Movement, 1920-1955* (Carleton: Melbourne University Press, 1975), 96-97.
 22. In contrast, the constitution of the Canadian Labour Defence League (a communist-affiliated civil liberties group) incorporated social and economic rights, including the right to work and to a fair wage. The ACCL did not address discrimination against Aborigines. Similarly, the Association for Civil Liberties in Toronto did not campaign for anti-discrimination legislation until the 1950s. J. Petryshyn, “A.E. Smith and the Canadian Labour Defence League” (PhD thesis, University of Western Ontario, 1977), 42; Don Watson, *Brian Fitzpatrick: A Radical*

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- Life, Sydney* (Sydney: Hale & Iremonger, 1979), 92. On the Association for Civil Liberties, see Ross Lambertson, "The Dresden Story: Racism, Human Rights, and the Jewish Labour Committee of Canada," *Labour/Le Travail* Spring, no. 47 (2001). National Library of Australia, Brian Fitzpatrick, MS4965, series 1 (c), Aborigines, correspondence 1936 to 1956, letter from Fitzpatrick to Gordon Birt, May 27, 1946.
23. The statute also made reference to creed and colour. Statutes of Saskatchewan, *An Act to Protect Certain Civil Rights*, 1947, c.35.
 24. Dominique Clement, "'I Believe in Human Rights, Not Womens Rights': Women and the Human Rights State, 1969-1984," *Radical History Review* 101 (2008); Walter S. Tarnopolsky, *Discrimination and the Law in Canada* (Don Mills: De Boo, 1982), Chap. 2. For a full account of the history and development of human rights laws, see Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930-1960* (Toronto: University of Toronto Press, 2005). Rosanna L. Langer, *Defining Rights and Wrongs: Bureaucracy, Human Rights, and Public Accountability* (Vancouver: UBC Press, 2007), 4; T.M. Eberlee and D.G. Hill, "The Ontario Human Rights Code," *The University of Toronto Law Journal* 15 (1964): 451.
 25. Library and Archives Canada, Jewish Labour Committee, MG28 V75, Vol. 36, File 14, letter from Ernest Manning to Michel Gouault (United Council for Human Rights), June 8, 1964. Maureen Riddell, *The Evolution of Human Rights Legislation in Alberta, 1945-1979* (Edmonton: Queens Printer, 1978-9), 6.
 26. National Archives of Australia, A8910, Alteration of Constitution: Federal Referendum, The Case For and Against, by the Chief Electoral Officer of the Commonwealth, April 20, 1944; National Library of Australia, Robert Menzies, MS4936, Series 6, Various Broadcasts 1942-1953, Guarantee Freedom, March 17, 1944.
 27. Cathal J. Nolan, "Reluctant Liberal: Canada, Human Rights and the United Nations," *Diplomacy & Statecraft* 2, no. 3 (1990): 287-88.
 28. Devereux, *Australia and the Birth of the International Bill of Human Rights, 1946-1966*, 8, 51-57.
 29. During the debates surrounding the UDHR, the Canadian delegation was instructed to make every effort to ensure the primacy of state sovereignty over individual rights. Nolan, "Reluctant Liberal." 284-86. See also Paul Gecelovsky and Tom Keating, "Liberal Internationalism for Conservatives: The Good Governance Initiative," in *Diplomatic Departures: The Conservative Era in Canadian Foreign Policy, 1984-1993*, ed. Kim Richard Nossal and Nelson Michaud (Vancouver: UBC Press, 2001), 195.
 30. Kim Richard Nossal, "Cabin'd, Cribb'd, Confin'd: Canada's Interests in Human Rights," in *Human Rights in Canadian Foreign Policy*, ed. Robert O. Matthews and Cranford Pratt (Kingston and Montreal: McGill-Queen's University Press, 1988), 50.
 31. Canada, *Hansard Parliamentary Debates*, 1947, vol.4, 3214-16.
 32. Australia, *Hansard Parliamentary Debates*, 1950, vol. 207, 2280.
 33. Library and Archives Canada, Walter S. Tarnopolsky, MG31 E55, vol.31, f.14, speech before the Conference of Human Rights Ministers in Victoria, November 8, 1974.
 34. Christopher MacLennan, *Toward the Charter: Canadians and the Demand for a National Bill of Rights, 1929-1960* (Montreal: McGill-Queen's University Press, 2003), 76.
 35. National Archives of Australia, Robert Menzies, MS 4936, series 6, Various Broadcasts 1942-53, box 256, speech on the referendum, March 17, 1944.
 36. Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press, 2010); Jean H. Quataert, *Advocating Dignity* (Philadelphia: University of Pennsylvania Press, 2009); William Korey, *NGOs and the Universal Declaration of Human Rights: "A Curious Grapevine"* (New York: Palgrave, 1998).
 37. Andrew Moravcsik, "The Paradox of U.S. Human Rights Policy," in *American Exceptionalism and Human Rights*, ed. Michael Ignatieff (Princeton: Princeton University Press, 2005).
 38. Daniel Roger Maul, "The International Labour Organization and the Globalization of Rights, 1944-1970," in *Human Rights in the Twentieth Century*, ed. Stefan-Ludwig Hoffman (Cambridge: Cambridge University Press, 2011), 305.

39. Moyn, *The Last Utopia*, 225.
40. On human rights and the early Cold War period, see David Forsythe, *Human Rights in International Relations*, 2nd ed. (Cambridge: Cambridge University Press, 2006), 41,43; Kirsten Sellars, *The Rise and Rise of Human Rights* (Phoenix Mill: Sutton Publishing, 2002); Susan Olzak, *The Global Dynamics of Racial and Ethnic Mobilization* (Stanford: Stanford University Press, 2006); Cynthia Soohoo, "Human Rights and the Transformation of the 'Civil Rights' and 'Civil Liberties' Lawyer," in *Bringing Human Rights Home: A History of Human Rights in the United States*, ed. Cynthia Soohoo, Catherine Albisa, and Martha F. Davis (Westport: Praeger, 2008). See also Stefan-Ludwig Hoffman, ed. *Human Rights in the Twentieth Century* (Cambridge: Cambridge University Press, 2011), 76, 80,147,219-20.
41. MacLennan, *Toward the Charter*, 75.
42. Mazower, "The Strange Triumph of Human Rights, 1933-1950," 395.
43. Julie A. Mertus, *Human Rights Matters: Local Politics and National Human Rights Institutions* (Stanford: Stanford University Press, 2008), 5.
44. Nancy Gordon and Bernard Wood, "Canada and the Reshaping of the United Nations," *International Journal* 47, no. 3 (1991): 499.
45. Kathleen Mahoney, "Human Rights in Canadian Foreign Policy," *International Journal* 47, no.3 (1991): 561.
46. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999); Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithica: Cornell University Press, 1998).
47. Lambertson, *Repression and Resistance*; Dominique Clement, *Canadas Rights Revolution: Social Movements and Social Change, 1937-1982* (Vancouver: UBC Press, 2008); Watson, *Brian Fitzpatrick*; Clement, "It Is Not the Beliefs but the Crime That Matters?"
48. Frank K Clarke, "Debilitating Divisions: The Civil Liberties Movement in Early Cold War Canada, 1946-8," in *Whose National Security? Surveillance and the Creation of Enemies in Canada*, ed. Gary Kinsman (Toronto: Between the Lines, 2000), 177.
49. On human rights and the Cold War in Canada and Australia, see Clarke, "Debilitating Divisions: The Civil Liberties Movement in Early Cold War Canada, 1946-8," 182. Meredith Burgmann, "Dress Rehearsal for the Cold War," in *Australia's First Cold War, 1945-1953*, ed. Ann Curthoys and John Merritt (Sydney: George Allen & Unwin, 1984).
50. Devereux, *Australia and the Birth of the International Bill of Human Rights, 1946-1966*, 51.
51. Mikael Rask Madsen, "Legal Diplomacy: Law, Politics, and the Genesis of Postwar European Human Rights," in *Human Rights in the Twentieth Century*, ed. Stefan-Ludwig Hoffman (Cambridge: Cambridge University Press, 2011).
52. Moyn, *The Last Utopia*, 8.
53. Risse, Ropp, and Sikkink, eds., *The Power of Human Rights*, 266.
54. Ruth Frager and Carmela Patrias, "'This Is Our Country, These Are Our Rights': Minorities and the Origins of Ontario's Human Rights Campaigns," *The Canadian Historical Review* 82, no. 1 (2001).
55. Clement, *Canadas Rights Revolution*, 179-82.
56. Library and Archives Canada, Frank Scott, MG30, D211, vol.47, Bilan de Maurice Champagne, sur ses trois années a la Ligue des Droits a titre de directeur general, presente a l'occasion de l'assemblee general annuelle des membres, May 28,1975; Service des archives et de gestion des documents, Universite du Quebec k Montreal, Ligue des droits de l'homme, 24P6f/4, memoire au conseil administration sur l'état de la Ligue, April 5,1984.
57. Howard Ramos, "What Causes Canadian Aboriginal Protest? Examining Resources, Opportunities and Identity, 1951-2000," *Canadian Journal of Sociology* 31, no. 2 (2006), and "Aboriginal Protest," in *Social Movements*, ed. Suzanne Staggenborg (Toronto: Oxford University Press, 2007), 59.
58. Bonnie Greene, ed. *Canadian Churches and Foreign Policy* (Toronto: James Lorimer, 1990); Ruth Compton Brouwer, "When Missions Became Development: Ironies of NGOization

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in Mainstream Canadian Churches in the 1960s,” *Canadian Historical Review* 91, no. 4 (2010).

59. Clement, “‘It Is Not the Beliefs but the Crime That Matters’”; Watson, *Brian Fitzpatrick*; Kenneth Bailey, interview, September 4, 2002; Conor Gearty, *Principles of Human Rights Adjudication* (Oxford: Oxford University Press, 2004).
60. Gearty, *Principles of Human Rights Adjudication*.
61. In 1990, Stephen Cohen compiled a list of advocacy groups in Australia that dealt with a wide range of issues. Among the 465 organizations there was only one self-identified human rights organization: the Human Rights Council of Australia, which was founded in Sydney in 1978. Stephen Cohen, *Australian Civil Liberties Organizations* (Sydney: International Business Communications Directory, 1990).
62. On debates surrounding a Canadian bill of rights, see Clement, *Canadas Rights Revolution*, Chap. 1; MacLennan, *Toward the Charter*.
63. Canada, Parliament, House of Commons and the Senate. *Special Joint Committee on the Constitution of Canada: First Report, 1972,18-19*. James B. Kelly, *Governing with the Charter: Legislative and Judicial Activism and Framers’ Intent* (Vancouver: UBC Press, 2005), 48.
64. Canada, Department of External Affairs. *Foreign Policy for Canadians*, vol. 3 (United Nations, 1970), 26-27.
65. There was one exception: South Australia passed an Anti-Discrimination Act in 1966.
66. Gillian Triggs, “Australia’s Ratification of the International Covenant on Civil and Political Rights: Endorsement or Repudiation?,” *British Institute of International and Comparative Law* 31, no. 2 (1982): 288.
67. MacLennan, *Toward the Charter*, 234.
68. Thomas Pegram, “Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions,” *Human Rights Quarterly* 32, no. 3 (2010); Linda Reif, “Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection,” *Harvard Human Rights Journal* 13, no.1 (2000).
69. Michael Behiels, “Canada and the Implementation of International Instruments of Human Rights: A Federalist Conundrum, 1919-1982,” in *Framing Canadian Federalism: Historical Essays in Honour of John T Saywell*, ed. Dimitry Anastakis and P.E. Bryden (Toronto: University of Toronto Press, 2009).
70. Daniel C. Thomas, “Human Rights Ideas, the Demise of Communism, and the End of the Cold War,” *Journal of Cold War Studies* 1, no. 2 (2005). Sara Snyder, *Human Rights Activism and the End of the Cold War: A Transnational History of the Helsinki Network* (New York: Cambridge University Press, 2011).
71. Kim Richard Nossal, Stephane Roussel, and Stephane Paquin, *International Policy and Politics in Canada* (Toronto: Pearson Canada, 2011), 290.
72. Cathal J. Nolan, “The Influence of Parliament on Human Rights in Canadian Foreign Policy,” *Human Rights Quarterly* 7, no. 3 (1985): 387-88.
73. Kent, “Australia and the International Human Rights Regime,” 259.
74. Ian Russell, “Australia’s Human Rights Policy: From Evatt to Evans,” in *Australia’s Human Rights Diplomacy*, ed. Ian Russell, Peter Van Ness, and Beng-Huat Chua (Canberra: Australia Foreign Policy Publications Program, 1993), 27.
75. Kent, “Australia and the International Human Rights Regime,” 257.
76. *Ibid.*, 258.
77. T.A. Keenleyside and Patricia Taylor, *The Impact of Human Rights Violations on the Conduct of Canadian Bilateral Relations: A Contemporary Dilemma* (Toronto: Canadian Institute of International Affairs, 1984), 5, 244-50. See also Greene, *Canadian Churches and Foreign Policy*. During its brief period as government in 1979, the Conservative Party withheld aid from Vietnam because of gross human rights violations. Nolan, “The Influence of Parliament on Human Rights in Canadian Foreign Policy,” 383.
78. Russell, “Australia’s Human Rights Policy,” 24.
79. *Ibid.*, 27.

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80. For a critique of Canadian foreign policy and human rights, see Nossal, "Cabin'd, Cribb'd, Confin'd."; David Gillies, *Between Principle and Practice: Human Rights in North-South Relations* (Montreal and Kingston: McGill-Queen's University Press, 1996).
81. On the impact of international treaties on Canadian human rights legislation, see Shannon Williams, "Human Rights in Theory and Practice: A Sociological Study of Aboriginal Peoples & the New Brunswick Human Rights Commission, 1967-1997" (MA thesis, University of New Brunswick, 1998), 30. Dominique Clement, "Searching for Rights in the Age of Activism: The Newfoundland-Labrador Human Rights Association, 1968-1982," *Newfoundland Studies* 19, no. 2 (2003). Alan D. Reid, "The New Brunswick Human Rights Act," *University of Toronto Law Journal* 18, no. 4 (1968).
82. James Walker, "Race," *Rights and the Law in the Supreme Court of Canada: Historical Case Studies* (Toronto: Wilfrid Laurier University Press, 1997), 175-78.
83. On human rights law in Canada, see Tarnopolsky, *Discrimination and the Law in Canada*; Howe and Johnson, *Restraining Equality*; Dominique Clement, "Human Rights Law and Sexual Discrimination in British Columbia, 1953-1984," in *The West and Beyond*, ed. Sara Carter, Alvin Finkel, and Peter Fortna (Edmonton: Athabasca University Press, 2010), "'Rights without the Sword Are but Mere Words': The Limits of Canada's Rights Revolution," in *A History of Human Rights in Canada*, ed. Janet Miron (Toronto: Canadian Scholars Press, 2009), and "'I Believe in Human Rights, Not Women's Rights?'"
84. Maxwell Yalden, *Transforming Rights: Reflections from the Front Lines* (Toronto: University of Toronto, 2009), 143.
85. The Australian High Court determined that the federal government could impose treaty obligations on states because, unlike Canada, the Australian constitution included an external affairs clause as part of federal jurisdiction. *Attorney-General of Canada v. Attorney-General of Ontario* [1937] 1 Dominion Law Reports 673 [Labour Conventions Case]; *R v. Burgess, Ex parte Henry* [1936] 55 Commonwealth Law Reports 608. On the use of external affairs power to implement human rights legislation in Australia, see Nick O'Neill, Simon Rice, and Roger Douglas, *Retreat from Injustice: Human Rights Law in Australia* (Sydney: The Federation Press, 2004), 29-38. For a detailed discussion of early anti-discrimination laws in Australia, see O'Neil et al, *Retreat from Injustice*, Chap. 18.
86. On Australian human rights legislation, see Louise Chappell, John Chesterman, and Lisa Hill, *The Politics of Human Rights in Australia* (Cambridge: Cambridge University Press, 2009), Chap. 2.
87. "The [Racial Discrimination Act] closely followed the wording of the treaty on which it is based, adopting as the definition of discrimination the same definition used in the [Convention for the Elimination of Racial Discrimination]." O'Neil et al, *Retreat from Injustice*, 478. "It was not until well into the 1970s that the first attempts were made to address the problem of discrimination in [Australia]. . . . The Racial Discrimination Act was largely modeled on the New Zealand Race Relations Act 1971 and the United Kingdom Race Relations Act 1968." Mathews, "Protection of Minorities and Equal Opportunities," 2-3.
88. O'Neill, Rice, and Douglas, *Retreat from Injustice*, 199.
89. There were failed attempts in 1973, 1977, and 1979 to introduce comprehensive federal legislation. The Australian human rights regime also had severe limitations when it first emerged. Peter Bailey and Annemarie Devereux, "The Operation of Anti-Discrimination Laws in Australia," in *Human Rights in Australian Law: Principles, Practice and Potential*, ed. David Kinley (Sydney: Federation Press, 1998); Andrew Byrnes, Hilary Charlesworth, and Gabrielle McKinnon, *Bills of Rights in Australia: History, Politics and Law* (Sydney: UNSW Press, 2009); James Spigelman, *Statutory Interpretation and Human Rights* (Queensland: University of Queensland Press, 2008).
90. State human rights commissions, however, were later empowered to enforce their own remedies. Chappell, Chesterman, and Hill, *The Politics of Human Rights in Australia*, 39.
91. Australian human rights statutes required a judge to preside over a tribunal. The judge had the option of allowing legal representation, and most often lawyers were allowed to participate. In

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this way, the Australian system was far more akin to a court, although tribunals have greater flexibility regarding the rules of evidence. In contrast, boards of inquiry in Canada were designed to avoid a courtroom-type approach to human rights adjudication.

92. Dominique Clement, "The Evolution of Human Rights in Canada: From 'Niggardly Acceptance to Enthusiastic Embrace,'" *Human Rights Quarterly* 34, no. 3 (2012): 751-78.
93. Service des archives et de gestion des documents, Université du Québec à Montréal, Ligue des droits de l'homme, 24P1/13, minutes of the administrative council, December 5, 1977.
94. Clement, *Canadas Rights Revolution*, Chap. 5.
95. Peter Russell, "The Political Purposes of the Canadian Charter of Rights and Freedoms," *Canadian Bar Review* 61, no. 1 (1983).
96. Mathews, "Protection of Minorities and Equal Opportunities," 4; Howe and Johnson, *Restraining Equality*, 12-13, 91-95.
97. Ann Kent argues that, with regards to Australian foreign policy, "human rights, or more narrowly civil rights, were of consequence in so far as they were abused by Communist states." Ann Kent, "Human Rights," in *Australian Foreign Policy: Into the New Millennium*, ed. F.A. Mediansky (Sydney: Macmillan Education Australia, 1997), 164.
98. On American influences, see Robert Vipond, "The Civil Rights Movements Comes to Winnipeg: American Influence on 'Rights Talk' in Canada, 1968-1971," in *Constitutional Politics in Canada and the United States*, ed. Stephen L. Newman (Albany: State University of New York Press, 2004).
99. On the Jewish Labour Committee, see James Walker, "The 'Jewish Phase' in the Movement for Racial Equality in Canada," *Canadian Ethnic Studies* 34, no. 1 (2002).