Australia and the Birth of the International Bill of Human Rights 1946–1966
by Annemarie Devereux
Federation Press, Leichhardt, 2005, 306 pages

Summary
‘Human rights’ is a language and an ideal that many people readily accept as fundamentally correct — to support human rights is good, while to oppose human rights is bad. Devereux’s book studying Australia’s historic international practice on human rights is a compelling and significant review of how Australian politicians and policy makers understood and negotiated ideal ‘human rights’ in the 20 years following World War II. It highlights the fundamental ambiguity of the term and is a strong reminder that states, communities and individuals can adopt practices that discriminate, blight and harm, while mouthing platitudes of ‘protecting human rights’.

Purpose and method
The book draws a very narrow scope of review as it examines Australia’s diplomacy in the period between the passing by the United Nations General Assembly of the Universal Declaration of Human Rights (UDHR) in 1946 and the opening for signature of the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR) in 1966. Devereux’s aim is to go beyond the typical ‘Cold War’ explanations for Australia’s international action during the 1950s and 60s. Devereux examines the domestic influences on Australia’s international policy and practice, in particular the link between domestic policy concerns on immigration, gender and Aborigines and Australia’s international stance on human rights. Her method is to explore the National Archive’s collection of correspondence between Australian government departments and the Australian Mission to the United Nations, as well as United Nations archives and personal correspondence from the time.

Topics
Although very broad in its coverage, the book covers three related but specific topics: first, the ‘conventional’ discussions of economic, social and cultural rights and civil and political rights; second, the rights of minorities, self-determination and the ‘jurisprudence of rights’; and third, the problem of implementation both
internationally and domestically. In examining these areas, Devereux’s work reveals
the hypocrisy and mean-spirited nature of Australia’s support for universal human
rights.

On the conventions, Devereux’s work follows the changing Australian positions
from strongly supporting the UDHR to the quite qualified acceptance of the ICCPR
and ICESCR. (Australia abstained on clauses covering the prohibition of slavery,
freedom of movement and a right to equality, and voted against clauses on
prohibiting racial hatred, a right to self-determination and specific plans for
compulsory, universal and free primary education (p 237).) The archival record
examined by Devereux reveals the extent to which Australian government
departments recognised that signing the international conventions could lead to
international embarrassment for Australia because of domestic policies in a range of
fields, such as on Indigenous peoples, migrants and women.

On the question of equality, Australia refused to support the right, concerned that it
would undermine laws on ‘aliens, aboriginal voting rights, conditions of
employment and women in public service’ (p 80). On the rights of minorities,
Australia repeatedly argued that there were no ‘minorities’ in Australia because
recent immigrants ‘are not encouraged in preserving their ethnic traditions’ (p 95)
and ‘Aboriginal peoples had no competing culture since they had only reached the
level of food-gatherers’ (p 95).

By way of comparison, Devereux notes that only a few years before, during World
War II, the government interned Australian citizens of German or Japanese ethnic
origin, which seemingly belies their ‘cultural homogeneity’. Similarly, the archival
record showed that, while the diplomats argued that there were no minorities,
Australian government departments did recognise minorities — such as the
Department of Interior’s view on Aboriginal people. External Affairs dismissed this
by arguing that they were not ‘minorities’ in the relevant sense. Even when Australia
did eventually support a minority rights clause, it was only with a strict and limited
understanding of the term, emphasising the requirements of national unity and that
minority rights are essentially ‘privatised’ or ‘freedom from’ rights. There were to be
no positive obligations on the state to support such rights.

On Australia’s treatment of its Indigenous peoples, Australian government
departments were aware that several policies were vulnerable to allegations of
inconsistency with the conventions’ human rights requirements. These included the
prohibition of arbitrary interference and the removal of half-caste children; the right
to freedom of movement and the restrictions on movement in the Territory; the right
to marry and laws requiring permission for Indigenous women to marry non-
Indigenous males; equal suffrage and the ban on voting; and, finally, the right to work and restrictions on Indigenous peoples working in the mining industry (p 73).

Devereux notes that ‘rather than this analysis catalysing policy changes, the Department [of Interior] thought the international law deficient because it did not allow for the different treatment. The department also stated that the convention rights might not apply to Australia’s Indigenous peoples because the rights were not intended to apply to ‘natives who have not yet reached a state of civilization where they can fend for themselves and protect their own interests’ (p 73).

Devereux further finds that the response by the Department of External Affairs to these concerns was to limit international discussion: ‘Delegates were directed, however, to refer in general terms to the need for most countries to make reasonable distinctions with respect to voting rights (given existing limitations on the basis of literacy, criminal conviction and mental deficiency) so as to avoid “unwise public reference to special situations obtaining in Australia”’ (p 76).

On self-determination, Devereux describes the Australian position as ‘hard-line’, ‘extreme’ and ‘vociferous’. Australia argued against a self-determination right by suggesting that the general recognition of human rights would protect all people in Australia, both on the mainland and in its administered colonial territories. At the same time, Devereux notes, Australia argued (unsuccessfully) for a colonial application clause to limit the application of human rights to those in colonial territories. Also, Devereux’s archival analysis shows that Australia’s concern with self-determination had no link to Aboriginal self-determination — it was the role of migration and the external territories that raised the concerns. Devereux postulates that this may have been a reflection of the ‘minorities’ argument that Aboriginal peoples were not even a minority.

Even in the area of more general civil and political rights, which Australia fundamentally accepted, government support was limited. Australia’s proposals to the UN drafting committee for a right to equality would not require legislation on unlawful discrimination, as this was something to address through education. Australia’s support for a right of freedom from arbitrary detention did not include a right to compensation for wrongful imprisonment, preferring a non-enforceable system of ex gratia payments. Further, Australia opposed bans on ‘hate speech’ on freedom of speech grounds.

In reviewing Australia’s stances on the negotiation of an international human rights framework, Devereux identifies several phases in Australia’s diplomatic practice. One coincides with the shift from a Labor to a Liberal government in 1949, in which
fundamental questions about the nature of human rights, the role of the state and the methods of implementation changed radically. Another shift occurs in the 1950s through the movement of policy decision-making from the minister to the bureaucracy, which sees a growing conservatism and caution about international obligations and the scope of international intervention. In both changes, Devereux argues that endogenous or domestic factors were most significant, rather than exogenous or international concerns like the Cold War, in driving policy and practice.

Her particular emphasis is the philosophical underpinnings in the different phases and the significance of individual concerns or foibles in maintaining or altering that position. In this sense, the shifting beliefs on the transforming power of the state, the absolute freedom of the individual and the nature of sovereignty were crucial in understanding the changes from the policies pursued by Evatt, the reversals articulated by Spender and the ongoing bureaucratic intransigence until the conventions were signed.

Comment

The relevance of Devereux’s writing is in many areas — history, law and international relations.

In historical terms, Devereux’s work serves several useful functions. First, it provides a detailed and rigorous record of Australia’s diplomatic actions and policies in the postwar period. It aims to highlight the nuances to the Australian outlook on alliances, despite the preponderance of Cold War concerns. Second, Devereux places Australia’s current human rights practices in a broader context. In particular, the work emphasises Australia’s long-term ‘blind spots’ around definitions of equality, national identity and social cohesion. Third, the work is a reminder of the significance of archival work as a method of scholarly activity, in comparison to the ‘oral history’ method of recollection through interviews. While Devereux appears aware of the limits of documentary records, the depth of the archival research allows for significant scholarly analysis over a period extending 20 years.

In terms of law, Devereux’s analysis provides an interesting counterpoint to the usual ‘objective’ analysis of international treaty interpretation. This very close analysis of state practice provides a better explanation for a state’s interpretation and compliance with the law over time than the muddled search for an ‘objective' interpretation of a convention’s wording. It also provides substantial context to other studies on Australia’s relationship with international human rights law by Bailey (Human Rights: Australia in an International Context Butterworths, Sydney, 1990), Piotrowicz and Kaye (Human Rights in International and Australian Law Butterworths,
Sydney, 2000) and O’Neill, Rice and Douglas (Retreat from Injustice: Human Rights Law in Australia, Federation Press, Annandale, 2004, 2nd edn). In particular, Devereux’s work provides some explanation as to why the struggle over the recognition of human rights continues, even 40 years after the signing of the conventions.

International relations scholars who follow liberal theorists such as Goldstein on the significance of domestic factors in international relations should find great support in the records examined by Devereux. The pressures to maintain immigration and indigenous policies determined Australia’s international practice. In a similar way, the dramatic change from Evatt to Spender supports the contention that domestic interests drive international practice. The work also presents useful material for theorists countering the realist assumption of the unitary state. Devereux’s analysis of the relationship between the Department of External Affairs and other government departments, such as Attorney-General’s, Labour and Territories, highlights that battles between government departments drove Australian diplomatic practice as much as relations between nation states.

**Conclusion**

The benefit of Devereux’s work is the combination of an important theoretical perspective and very detailed archival work. The book is a compelling historical account of Australia’s diplomatic activity, based on an exhaustive investigation of Australia’s National Archive records. The evidence she presents from archived correspondence supports her contention that domestic factors were critical in determining Australia’s diplomatic stance — in particular, the change of government and the philosophies and status of the decision-makers during the period. The work avoids the common pitfall of an overly narrow analysis and a failure to appreciate the relevant context. In fact, Devereux’s ability to distinguish between Cold War concerns and domestic interests makes the analysis very useful. Overall, Devereux’s work is worthy of close reading, as it is a reminder that the language of human rights is inherently ambiguous and requires constant vigilance if it is to be used to empower individuals and to relieve suffering.

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