The Promotion of Human Rights through Bilateral Treaties: The Australian Experience with Migration and Settlement Agreements

By R.B. Lillich
Howard W. Smith Professor of Law, University of Virginia
and S.C. Neff
Research Fellow, Christ's College, Cambridge

Introduction

Through much of history, the art of augmenting the population of one's country has constituted an important part of statesmanship. Such was most notably the case during pre-industrial times when economic production was so highly labour-intensive (i.e., when the scope for increasing the productivity of an existing labour force was so much less than it later became).[1] A particularly forthright exposition of this thesis comes from that pre-eminently successful statesman of the *ancien regime* Frederick the Great of Prussia: "The first principle which presents itself, the most general and the most true, is that the real strength of a state consists of the number of its subjects."[2] It might be added that Frederick the Great was no mean practitioner of this doctrine which he espoused: during the course of his reign (1740-81), he managed to double the population of his domains (from approximately two and a half million to approximately five million) by a judicious blend of ruthless armed aggression and a coldly rational scheme of financial grants and social incentives (such as religious toleration) to attract immigrants from other states.[3]

With the onset of the Industrial Revolution and later problems of over-population, the European states came to be less concerned with this problem. Not so, however, for certain developing countries such as Argentina or Australia, which possessed vast resources and relatively small populations to exploit them. There, the concern to attract ever more immigrants continued to hold sway into the Nineteenth and Twentieth Centuries, summed up in the

1. During the mercantile period (which is the one referred to here), it is well known that the various states of Europe competed ferociously with one another to acquire precious metals. Less well known is the fact that they also competed vigorously to acquire people. On the population policies associated with mercantilism generally (including the harsh measures which many of the mercantilists advocated for squeezing ever more work out of individual labourers): see Heckscher, EF, *Mercantilism,* Vol 2, 152-72 (1955 rev ed by Solerlund, EF, trans by Schapiro, M).
2. From the *Political Testament* (1768), quoted from Williams, E, *The Ancien Regime in Europe: Government and Society in the Major States 1648-1789,* 386 (1970).
3. Ibid, 385-6.

blunt statement by the Argentine political theorist Juan Bautista Alberdi that "To govern, is to populate."[4] On behalf of Australia, Arthur Calwell (Minister of Immigration in the important period immediately following World War II) eloquently voiced similar sentiments:[5]

> "We Australians are a young and virile people and our national heart beats strongly. But the body, of which the heart is the motivating force, is a huge land mass, an island continent of some three million square miles with 12,000 miles of coastline. Before a body of such vast dimensions can be operated at full efficiency, its heart must beat strongly and be fed by the extra life-blood which only new citizens can supply."

Frederick the Great himself could hardly have put it better.

It is clear that in the matter of attracting immigrants, the predominant (in the Prussian case, the exclusive) motive has been one of *realpolitik:* to increase the strength and vitality of the importing state.[6] The concern for the welfare of the immigrants themselves has been secondary.

Since World War II, however, there has been an important and largely unobserved change in this respect, pioneered above all by Australia. There is an element of irony in this fact, since the chief fame — or rather, notoriety — of Australia has been the extreme restrictiveness of its general immigration law and policy. Indeed, there should be no pretence that the "White Australia" policy has contributed in any way whatsoever to the progressive development of international law. Things are otherwise, however, with respect to Australian practice on assisted-passage migration and settlement. The Australian record in this area has gone largely unnoticed chiefly because it lies hidden from casual view in a network of bilateral treaties concluded in the twenty-five year period following World War II. Such attention as has been focused upon this aspect of Australian policy has concentrated almost wholly on the demographic and social aspects,[7] to the neglect of the legal ones.

This neglect is highly unfortunate, because the post-World War II experience of Australia is of great importance in the emergence of international-law standards on the human rights of aliens. As the discussion below will indicate, the Australian state practice in this area has shown a gradual, but definite, evolution towards the provision of ever more guarantees of human rights for migrants *after* their arrival in the country. In short, the view that the individual beneficiaries of assisted-passage migration and settlement treaties are mere instruments for the development of the receiving state must

---

4. Quoted from Pendle, G, *A History of Latin America,* 138 (1963). On Alberdi generally, see Davis, H, *Juan Bautista Alberdi* (1958).
5. HR Deb, Vol 189, 502 (22 Nov 1946). For terseness, Calwell could also prove himself the equal of Alberdi: "Populate or perish", was his slogan: Younger, R, *Australia and the Australians:* A *New Concise History,* 678 (1969).
6. See, for example, another of Calwell's paeans to the new immigrants of Australia "who will help push back our frontiers, expand our industries, bring more and more of our virgin soil into production and build us into a powerful nation, secure in our peace-loving way of life": HR Deb, Vol 195, 2916 (28 Nov 1947).
7. See, for example, Salter, M, *Studies in the Immigration of the Highly Skilled* (1978); and Price, "Migration to and from Australia" in Smith, T, (ed) *Commonwealth Migration: Flows and Policies,* 11 (1981).

now be discarded (at least in the case of Australia) in favour of the idea that they should now be regarded as bearers of important legal rights in their own right.

Part I of this article will give the historical background to the post-World War II immigration policy of Australia, and will also indicate where the bilateral treaty programme in particular fits into the welter of devices which the country has adopted in the immigration field since the war. Part II will be an analysis of the treaties themselves. Section A of that part will sketch briefly the normal arrangements for assisted passage and settlement which these agreements typically embody. Section B will be a detailed analysis, in broadly chronological order, of the evolution of the human rights element of this treaty practice — evolution to the point, as will be seen, that the later treaties have come to constitute, in effect, broad charters for the equality of aliens from the states concerned with Australian nationals. Finally, the conclusion will discuss the broader implications for international human rights law of the trends observed in the Australian treaty experience.

The present discussion is based upon a consideration of the following eighteen bilateral agreements:

(1) U.K.: Free Passage Migration Agreement (1946);[8]
(2) U.K.: Assisted Passage Migration Agreement (1946);[9]
(3) Malta: Assisted Passage Agreement (1948) (hereinafter referred to as the "first Maltese agreement" or as the "1948 Maltese agreement");[10]
(4) Netherlands: Agreement for Assisted Migration (1951) (hereinafter referred to as the 'first Dutch agreement' or the '1951 Dutch agreement');[11]
(5) Italy: Agreement for Assisted Migration (1951) (hereinafter referred to as the 'first Italian agreement' or as the '1951 Italian agreement');[12]
(6) West Germany: Agreement for Assisted Migration (1952) (here-

8. The text of this agreement does not appear in the official treaty series of either the UK, Australia or the UN. For a description of its contents, however, see remarks of Mr Parker (Under-Secretary of State for Dominion Affairs) on 5 March 1946, Parl Deb HC, 5th ser, Vol 420, 186-8. The agreement entered into force on 31 March 1947. Remarks of Mr Bottomley (Under-Secretary of State for Dominion Affairs) on 3 March 1947, Parl Deb HC, 5th ser, Vol 434, 23.
9. The text of this agreement does not appear in the official treaty series of either the UK, Australia or the UN. For a description of its contents, see remarks of Mr Parker, loc cit. It entered into force on 31 March 1947. Remarks of Mr Bottomley, loc cit.
10. The text of this agreement does not appear in the official treaty series of either Australia or the UN. For a description of its contents, see remarks of Mr Calwell on 24 September 1948, HR Deb, Vol 198, 884.
11. Agreement for Assisted Migration, 22 Feb, 1951 (in force 1 April 1951), Aust TS 1951, No 11; 128 UNTS 115. It may be noted that there had been a prior agreement with the Netherlands Emigration Foundation which carried the official backing of the Dutch government, for the details of which see remarks of Mr Calwell on 28 November 1947, HR Deb, Vol 195, 2924.
12. Agreement for Assisted Migration, 29 Mar, 1951 (in force 1 Aug, 1951), Aust TS 1951, No 12, 131 UNTS 187; extended by Exchange of Notes Constituting an Agreement Relating to Assisted Migration, 31 Jan 1964 (in force 1 Feb, 1964), Aust TS 1964, No 3; 488 UNTS 197.

inafter referred to as the 'first German agreement' or as the '1952 German agreement');[13]

(7) Netherlands: Assisted Migration Agreement (1956) (hereinafter referred to as the 'second Dutch agreement' or as the '1956 Dutch agreement');[14]

(8) U.K.: Agreement Related to an Assisted Passage Migration Scheme (1957) (hereinafter referred to as the '1957 U.K. agreement');[15]

(9) Malta: Assisted Passage Agreement (1957) (hereinafter referred to as the 'second Maltese agreement' or as the '1957 Maltese agreement');[16]

(10) West Germany: Agreement for Assisted Migration (1958) (hereinafter referred to as the 'second German agreement' or as the '1958 German agreement');[17]

(11) U.K.: Assisted Passage Agreement (1962) (hereinafter referred to as the '1962 U.K. agreement');[18]

(12) Malta: Agreement for Assisted Migration (1965) (hereinafter referred to as the 'third Maltese agreement' or as the '1965 Maltese agreement');[19]

(13) Netherlands: Migration and Settlement Agreement (1965) (hereinafter referred to as the 'third Dutch agreement' or as the '1965 Dutch agreement');[20]

(14) West Germany: Agreement on Assisted Migration (1965) (hereinafter referred to as the 'third German agreement' or as the '1965 German agreement');[21]

(15) U.K.: Assisted Passage Migration Agreement (1967) (hereinafter referred to as the '1967 U.K. agreement');[22]

---

13. Agreement for Assisted Migration, 29, Aug 1952 (in force 29 Aug 1952), Aust TS 1952, No 12; 184 UNTS 147.
14. Assisted Migration Agreement, 1 Aug, 1956 (in force 20 May, 1957), Aust TS 1957, No 4; 280 UNTS 3. This agreement was extended by exchanges of notes of 26 Sep, 1961 (deemed in force 1 Apr 1961), Aust TS 1961, No 16; 411 UNTS 302; 29-31 Mar, 1962 (in force 1 Apr, 1962) Aust TS 1962, No 1; 425 UNTS 350; 29 Sep, 1962 (in force 2 Oct, 1962), Aust TS 1962, No 11; 445 UNTS 352; and 29 Mar, 1963 (in force 1 Apr 1963), Aust TS 1963, No 7; 463 UNTS 350.
15. Agreement Related to an Assisted Passage Migration Scheme, 1 Apr, 1957 (in force 1 Apr, 1957), Aust TS 1957, No 6; 271 UNTS 235. A minor amendment was effected by an exchange of notes of 12 and 13 June, 1958 (in force 19 June, 1958); 349 UNTS 336.
16. Assisted Passage Agreement, 13 Aug, 1957 (deemed in force 1 July, 1956), Aust TS 1957, No 12. This agreement does not appear in the UN Treaty Series.
17. Agreement for Assisted Migration, 27 Aug, 1958 (deemed in force 29 Aug, 1957), Aust TS 1959, No 3; 320 UNTS 303.
18. Assisted Passage Agreement, 28 May, 1962 (in force 1 June, 1962), Aust TS 1962, No 3; 434 UNTS 219.
19. Agreement for Assisted Migration, 28 Apr, 1965 (in force 1 July, 1965), Aust TS 1965, No 6; 548 UNTS 203.
20. Migration and Settlement Agreement and Exchange of Notes, 1 June, 1965 (in force 30 Dec, 1965), Aust TS 1965, No 22; 560 UNTS 85.
21. Agreement on Assisted Migration, 21 June, 1965 (deemed in force 29 Aug, 1962), Aust TS 1965, No 9; 542 UNTS 53.
22. Assisted Passage Migration Agreement, 6 June, 1967 (deemed in force 1 June, 1967), Aust TS 1967, No 14. This agreement does not appear in the UN Treaty Series.

(16) Italy: Migration and Settlement Agreement (1967) (hereinafter referred to as the 'second Italian agreement' or as the '1967 Italian agreement');[23]
(17) Turkey: Agreement Concerning the Residence and Employment of Turkish Citizens in Australia (1967);[24] and
(18) Yugoslavia: Agreement on the Residence and Employment of Yugoslav Citizens in Australia (1970).[25]

Historical background

Organised migration and settlement programmes for Australia certainly did not begin after the Second World War. As early as 1832, for instance, the New South Wales Executive Council appropriated an annual sum of £10,000 from land revenues to enable unemployed agricultural labourers from the south of England, and females from the workhouses, to migrate.[26] A decade later, in 1842, England adopted an Act for Regulating the Sale of Waste Land Belonging to the Crown in the Australian Colonies, which provided that half of the proceeds from the sale of waste lands be applied to assist with the emigration of migrants who were unable to pay their own passage fares.[27] By the 1880s, each of the Australian states had some kind of plan for assisted migration and settlement.[28]

From the very beginning of the federation period (1901), the federal government of Australia took an interest in this area,[29] although it was not until after World War I that it became actively involved in an organised assisted-passage migration scheme. The occasion came with the adoption by the U.K. of the Empire Settlement Act 1922,[30] which was a fifteen-year arrangement (renewed a number of times so as finally to expire in 1972)[31]

23. Migration and Settlement Agreement, 26 Sep. 1967 (in force 8 July, 1971), Aust TS 1971, No 13. This agreement does not appear in the UN Treaty Series.
24. Agreement Concerning the Residence and Employment of Turkish Citizens in Australia, 5 Oct. 1967 (in force 5 Oct. 1967), Aust TS 1967, No 22; 660 UNTS 55.
25. Agreement on the Residence and Employment of Yugoslav Citizens in Australia, 12 Feb. 1970 (in force 20 May, 1970), Aust TS 1970, No 5; 742 UNTS 299.
26. Salter, op cit 17. This work contains, at 15-61, a very useful historical outline of assisted-passage policies throughout Australian history.
27. Ibid, 18. Plans of this kind were in large part the outcome of a vigorous campaign for planned, as opposed to haphazard, settlement of the British Empire by Edward Gibbon Wakefield. See particularly Wakefield, E, *Letter from Sydney* (1829) and A *View of the Art of Colonization* (1841). Other important influences on colonial settlement policies during the mid-Nineteenth Century were Wilmot-Horton, R, *Causes and Remedies of Pauperism* (1830); and the "Reports of the House of Commons Select Committee Appointed to Inquire into the Expediency of Encouraging Emigration from the United Kingdom" of 1826-27. For a description of the attempts in Australia to bring the Wakefield programme into practice during the Nineteenth Century, see Mills, R, *The Colonization of Australia: The Wakefield Experiment in Empire Building* (1915).
28. Pope, "Assisted Immigration and Federal-State Relations: 1901-30", (1982) 28 Aust J Pol & Hist 21.
29. See generally ibid.
30. 12 & 13 Geo 5, c 13.
31. See Empire Settlement Act 1937, 1 Ed 8 & 1 Geo 6, c 18; Commonwealth Settlement Act 1957, 5 & 6 Eliz 2, c 8; Commonwealth Settlement Act 1962, 10 & 11 Eliz 2, c 17; the Commonwealth Settlement Act 1967, 15 & 16 Eliz 2, c 31. It was this last Act which expired in 1972.

whereby the U.K. government lent money to the Dominions to assist them in the financing of settlement plans of which residents of the British Isles would be the beneficiaries. The arrangement proved initially to be less successful than many had hoped, although by 1929 (when the Depression brought the programme virtually to a standstill),[32] some 200,000 British settlers had been brought to Australia.[33]

In the post-World War II period, the nature of the assisted-passage and settlement programme changed in a number of ways. Most obviously, it now began reaching out beyond the British Isles and even the Commonwealth generally to embrace other European countries — to the point that over the period 1947-77, the British component of net migration to Australia was less than fifty per cent of the total.[34] Another important development was that in the years immediately after the War, the desire to attract large numbers of immigrants came to be shared by both parties (the Labor Party having been frequently cool towards the idea in the past, because of the potential threat to jobs held by persons already settled in the country). The political consensus in Australia came to be in favour of increasing the population of the country by two per cent per year — in the full awareness that approximately half of this target would have to be accounted for by a vigorous immigration programme.[35]

The policy of concluding bilateral treaties with various countries for assisted passage and settlement was not the only element of this new immigration, although it is the one with which the present study is concerned. In order that this bilateral treaty effort may be placed in its proper perspective, it is well to give a brief outline of the range of policies which Australia devised during the post-war period.

The first steps in the new policy were indeed bilateral agreements: the Free Passage and Assisted Passage agreements of 1946 with the U.K. (the former for ex-service persons, the latter for civilians). These were part of the new-revived Empire (later Commonwealth) Settlement programme to which reference has already been made.[36] In 1948 came an agreement with Malta on the same terms.[37]

A notable innovation then came with the negotiation of an assisted passage and settlement agreement with the International Refugee Organization (the predecessor body within the UN system to the High Commissioner for

32. The curtailment of the programme during the Depression was partly the result of an official policy on the part of the UK government *not* to encourage migration during the times of "adverse economic conditions" there. See Oversea Settlement Department (Dominions Office), "Migration to Australia" (1931).
33. Price, op cit, 12.
34. The total from the British Isles during this period was 37.6 per cent, to be precise. With the addition to this figure of arrivals from New Zealand, Canada, South Africa and "Other British", the total comes to 44.9 per cent, still under half. The total during this period for Europe was 43.5 per cent. See generally Table 2.4: "Net Migration: 1947-77 (Annual Averages)" in Price, op cit, 40.
35. Ibid, 21-2.
36. See above p 146.
37. See above p 144.

Refugees).[38] Pursuant to this arrangement, Australia accepted over 200,000 refugees for settlement.[39]

In the meantime, Australia adopted some unilateral measures, the first one being an arrangement for migration and settlement of Allied and Empire ex-service persons. From the human rights standpoint, this agreement represented an unfortunate retrogression, since it was limited to service persons "of pure European descent".[40] The hope was that this plan would attract substantial numbers of Americans,[41] although on that count it was unsuccessful — the principal beneficiaries were persons of Dutch extraction from what is now Indonesia.[42] In 1954 this arrangement was absorbed into the General Assisted Passage Scheme, which was devised to provide unilateral passage assistance to immigrants from Scandanavian countries.[43] Another unilateral programme, begun in 1966, was the Special Passage Assistance Programme, whose purpose was to provide unilateral passage assistance to persons from the British Isles and Europe who were not eligible for assistance under the various bilateral and multilateral plans in existence. In 1970 the General Scheme was absorbed into the Special Programme.[44]

The immediate impetus for the bilateral treaty network was the winding up of the IRO in the early 1950s, the first agreements being reached with the Netherlands and Italy in 1951 and with West Germany in 1952. There appears never to have been any explicit long-range plan underlying these treaties. They simply gradually proliferated over the years. This fact probably goes far to explain why they have attracted so little attention from the scholarly community — and particularly from international human rights lawyers — to date. The next part of this study is an analysis of these treaties with a view to tracing the growth of the human rights component of them over the post-World War II period.

The Bilateral Migration and Settlement Treaty Practice of Australia since World War II

The usual arrangements for assisted passage

The treaties with which this study is concerned are certainly not all of a single type. The various U.K. agreements on assisted passage, for example, which were drafted under the Empire (later Commonwealth) Settlement programme of 1922-72 are very brief documents, stipulating the amount of money which the two governments commit themselves to providing for the scheme but not going into detail on how the machinery will work. The other

38. For a description of which, see the remarks of Mr Calwell on 28 November 1947: HR Deb. Vol 195, 2922-3.
39. Some of these 200,000 were brought under private arrangements between the IRO and various voluntary organisations. Price, op cit, 22-3.
40. Ibid, 22.
41. Remarks of Mr Calwell, loc cit, 2921-2.
42. Price, op cit, 22.
43. Salter, op cit, 54.
44. Ibid.

treaties do have such details, which tend to be broadly similar from one agreement to the next, and also to remain fairly consistent over the entire post-World War II period. The significant change over the years, as the next section will discuss, has been in the area of rights guaranteed to the migrants once they arrive in their new home. In the present context, therefore, it is only necessary to give a basic sketch of how the assisted passage arrangements per se operated.

The persons from the sending states who are to benefit typically are chosen by a selection process involving both governments. The normal practice is for the sending state to receive applications from its nationals who wish to emigrate to Australia. It makes a preliminary choice of persons who will be eligible for assistance; the Australian government then makes the final choice from among that pre-selected group. There is typically a requirement that the assisted migrants-to-be fall within certain age limits. The number and categories of migrants generally are determined jointly by the two contracting states on a year-to-year basis.

Some of the treaties are very detailed on the issue of assistance. For example, the first Italian agreement (of 1951) provided that Australia was to pay the lesser of £25 or one quarter of the fare, provided that Italy contributed the same amount or proportion. The contribution made by the governments is not always equal. In the Yugoslav agreement (of 1970), for instance, Australia is to pay the migrants' entire passage fare except for £25. Sometimes (as in the case of the 1965 German agreement) the treaty simply provides that the details of the assistance are to be agreed at a later date.

Most of the treaties make it abundantly clear that there is a nexus between the assisted migration and the development of the Australian economy. The typical arrangement is that the migrant enters into a written undertaking before his departure that he will stay in his allotted employment for two years; and that, if he does not, then he must refund to the Australian government whatever sum it had contributed towards his passage. Again, the U.K. arrangements are rather different, requiring only that the migrant remain in the country for two years, not necessarily in a particular employment (the same is true of the 1965 German agreement).

Once the migrant has completed his obligatory period of work, he is then usually free to apply for permanent residence status. The treaties generally do *not* contain any express modification of the normal Australian immigration and naturalisation legislation. They do usually provide, though, that assisted migrants applying for permanent residence will have their requests granted, unless they have proved themselves to be unsuitable during their initial two-year period.

The discussion may now turn to the more significant question of the evolution of guarantees of the human rights of the migrants over the post-World War II period.

The human rights element of Australian migration and settlement treaty practice since World War II

To some extent, historical accident has conferred an artificial air of regularity to the post-War Australian treaties, giving the impression of a steady and

inexorable progression from the early agreements, which gave seemingly no thought to the human rights of the migrants once they arrived in their new home, to the later ones which made explicit (and sometimes very extensive) provision in that regard. The artificiality lies in the fact that the very earliest post-War agreements were with the Mother Country: the Free Passage and the Assisted Passage Agreements of 1946 with the U.K. (the former for ex-service persons, the latter for civilians). It was quite natural that, in arrangements of that kind, there would be little fear of, say, discrimination against the migrants on ethnic or racial grounds.

One area, though, in which there might well have been such a fear was refugee immigration. It is therefore of some significance that under the 1947 agreement with the IRO referred to above, Australia's right of selection of immigrants was made subject to the proviso that such selection would be carried out without discrimination on grounds of either race or religion.[45] Still, this step was really only a preliminary one, since it did not concern the treatment which the migrants could expect once they had arrived in the country. Another aspect of the 1947 IRO agreement did touch upon that point, although to apply the term "revolutionary" to it (as did Arthur Calwell, the then Minister for Immigration)[46] seems slightly inappropriate by modern standards. The provision was for the fitting out of a former military camp (at Bonegilla, near Wodonga) as a reception and training centre for migrants, where systematic instruction in the English language and in Australian social conditions would be provided. There were not, however, any express guarantees here of equality of treatment with Australian nationals.

The first express guarantee of equality of treatment of non-Commonwealth migrants with Australian nationals which the authors have been able to locate is to be found not in a treaty but rather in the arrangement for Empire and Allied Ex-servicemen referred to above.[47] Under that scheme, the beneficiaries were to be entitled to employment under the same conditions as those applying to their Australian ex-servicemen counterparts. Also, they were to be entitled to use the facilities of the legal aid bureaux on the same basis.

The earliest opportunity for the government of Australia to demonstrate a commitment to equality of treatment for Southern Europeans was the 1948 Maltese agreement. The terms of that agreement were the same as those of the 1946 Free Passage and Assisted Passage Agreements with the U.K.,[48] meaning that there apparently[49] was no express stipulation of equality of treatment with Australian nationals. It should be noted, though, that this 1948 Maltese agreement was something of a special case, because it functioned not really as an immigration scheme per se, but rather as a "gesture of goodwill towards the Maltese people for their splendid efforts during the war."[50] One direct consequence of those "splendid efforts" was the

45. See fn 38 above.
46. Remarks of Mr Calwell on 28 November 1947, loc cit, 2923-3.
47. See above p 148.
48. See above fn 10.
49. One must say 'apparently' here because it is difficult to be certain when the precise text of the agreement remains unpublished. See above fn 10.
50. Ibid.

devastation by bombing of much of the arable land of the island. That fact, coupled with the closure of the Valetta dockyards after the war, led to such a severe over-population crisis that the British government became anxious that relief measures be taken. The 1948 Australian-Maltese agreement, then, was really an early form of foreign aid.

The true beginning of a systematic provision for the human rights of migrants, as noted above,[51] came in the early 1950s, with the winding up of the IRO and the consequent establishment of a High Commissioner for Refugees in the UN system. These developments led Australia to begin concluding bilateral treaties with certain countries that they had previously been taking migrants from under the 1947 IRO agreement referred to above.[52] The fruits of this effort were the first agreements with the Netherlands and Italy (in 1951) and West Germany (in 1952).

Ironically, the treaty with the former allied state (the Netherlands) contained less in the way of guarantees of equality of treatment with Australian nationals than did the agreements with the two former Axis powers. In the 1951 Dutch agreement, there were two provisions relating to what would generally be called the human rights of the persons concerned. One is Article 6, relating to the matter of family reunions: it sets down Australia's understanding that a substantial flow of Netherlands migrants will depend upon the acceptance by Australia of "a reasonable ratio" of family units to the total number of migrants. The second noteworthy provision is found in paragraph 13 of the schedule to the agreement, guaranteeing to migrants "normal" social service benefits — meaning, presumably, that there will be equality of treatment with nationals in that respect.

The 1951 Italian and the 1952 German agreements, as just mentioned, go somewhat further in the human rights area, although it might be noted that the 1951 Italian contains one outstanding afront to the concept of human rights: Article 2 expressly limits the scheme in question to Italian nationals "of European descent" who normally reside in Italy. On the other side of the ledger, however, is Article 7, which states that during the two-year period in which the migrant is fulfilling his undertaking to the Australian government to work on a job selected for him, he is to be entitled to wages, accommodation and general conditions of employment on an equal basis with Australian nationals. This guarantee is an important one for migrants, although by its terms it only refers to the initial two-year period of assigned work. Like the beneficiaries of the first Dutch agreement, the Italians here are to be entitled to "normal social security benefits" (Paragraph 22 of the Schedule to the agreement). Unlike the Dutch, though, the Italians have the benefit of a provision relating to housing: Paragraph 22 of the Schedule provides that in cases where the employer provides housing for the employee, the Australian government is to see that the standards of accommodation and the charges made by the employer are the same as for nationals. It is interesting that the guarantee here is not for adequate or reasonable

51. See above p 150.
52. See fn 38 above.

accommodation per se but rather for equality of treatment with nationals. Finally, this 1951 Italian agreement is more liberal than its Dutch counterpart concerning the transfer of funds. The first Dutch agreement had provided only for the transfer of reasonable funds from the Netherlands to Australia by the migrants. The 1951 Italian agreement goes beyond that and provides (in Article 17) for the repatriation back to Italy of "reasonable funds for the support of . . . dependant relatives or for any other justified reason."

The 1952 German agreement is substantially similar to the 1951 Italian one (without, however, containing any provision confining its benefits to persons of European descent). It therefore is not necessary to consider it in detail.

A second Dutch agreement emerged in 1956[53] which made some subtle but significant changes in the treatment of the migrants concerned. One of the most interesting differences between the first and the second Dutch agreements was that the first, but not the second one, expressly stated (in Article 11) that the basic purpose of the arrangement was "the necessity of fostering the development of certain branches of both primary and secondary industries which are of vital importance to the Australian economy. . . ." The migrants, in short, were (as posited above)[54] a means toward an end. No such express language appears in the second Dutch agreement, although it would be naive to conclude from that fact that the Australian government had become concerned with the welfare of the migrants to the total exclusion of economic factors. On a more specific level, the second Dutch agreement inches slightly ahead of the first Italian and German agreements in that it provides for equality of treatment between Dutch migrants and Australian nationals in the area of wages and conditions of employment generally (i.e., *not* simply during the initial two-year period). Concerning the Australian government's duty in cases where employers provide housing for the migrants, and also regarding repatriation of funds from Australia to the Netherlands, the second Dutch agreement is on a par with the first Italian and German ones (Articles 5 and 12 respectively).

The next assisted passage and settlement treaty which Australia concluded was with Malta the following year (1957), to replace the 1948 Maltese agreement, in which (it will be recalled) Malta had received the same treatment as the U.K. This second Maltese agreement, in contrast, was broadly on the model of the Dutch, Italian and German treaties just discussed, but with several disturbing differences. For one thing, the 1957 Maltese agreement went further than the others in reserving the final power of selection of migrants for assistance to Australia — it expressly provided that the Australian government was to be under no obligation to disclose the grounds upon which it might deem an individual applicant to be unsuitable for the scheme. Also, the second Maltese agreement made no provision for equality of treatment with Australian nationals even in the sphere of wages and conditions of employment, to say nothing of generally. Finally, it did not include any express provision at all relating to the repatriation of funds. The agreement did provide, on the other hand, for the payment of normal social

53. The first one had expired by effluxion of time, in accordance with Article 1.
54. See above p 143.
55. See Nussbaum, A, *A Concise History of the Law of Nations*, 202 (1947).

security benefits and for equal treatment of Maltese nationals with Australians in the area of housing standards in cases where employers provided workers' housing. Still, the conclusion is inescapable that in the area of human rights of migrants, there was a bias in favour of northern and western, and against southern and eastern, Europe.

Following upon the expiry of the first German agreement in 1957 came a replacement treaty, concluded the following year but in force retroactively to 1957. The provisions in this second German agreement regarding social security benefits, the repatriation of funds to Germany and the duty of the host government to ensure that housing provided by employers to immigrant employees was the same as that for nationals (as regards the standard of accommodation and the price charged) all essentially reproduce the corresponding provisions of the first German agreement. In the area of equality of treatment in the employment area, though, there was a significant extension: now, for the first time, equality of treatment with nationals concerning wages and general conditions of employment was guaranteed beyond the two-year initial working period provided for in the agreement (Article IV).

Another agreement which Australia concluded in 1957 was one with the U.K., replacing the 1947 Assisted Passage Agreement. This treaty, like its predecessor, was concluded under the Empire (now Commonwealth) Settlement Programme. Also, like its 1947 predecessor, this agreement has hardly anything of interest in it from the human rights standpoint (although there is an express provision for the payment of "normal social security benefits" to the British immigrants). This treaty was followed by virtually identical documents in 1962 and 1967 (i.e., the years coinciding with the next, and last, extensions of the Commonwealth Settlement Acts). None of these will figure any further in the present study.

The next entry in the bilateral migration and settlement treaty story came in 1965, with the negotiation of the third Maltese agreement. It represented no sharp departure from its 1957 counterpart, containing some very modest improvements but also, oddly, some cutting back of immigrants' rights as well. The cutback was contained in Article 14, on the payment of social security benefits to immigrants — Australia here was only obligated to ensure such payments "to the extent permitted by its law," which on a literal reading would render the treaty right altogether illusory (i.e., it would place the decision on whether to make such payments, and to what extent, wholly in the hands of Australia). A more reasonable reading would be that the host country's action under Article 14 was subject to an overriding obligation of good faith and that consequently only reasonable restrictions (meaning, presumably, ones of a procedural nature only) would be allowed on the payment of benefits. Still, there is no denying that under Article 14 as drafted, the migrants do not have an absolute right to equality of treatment with Australian nationals.

On the more positive side, the duties of the host government are slightly enlarged regarding housing provided by employers to migrants. The basic obligation on the government's part remains: i.e., to ensure that the standards and the charges are the same as for Australian nationals. The slight expansion of government responsibility lies in the fact that it is expressly required (also

in Article 14) to see to these matters *before* conveying the offer of employment to the migrant.

Also in 1965, the third Dutch agreement was concluded, replacing the 1957 one. In this case, there was truly a major advance in the rights accorded to migrants, to the point that the assisted passage element became wholly secondary, being relegated to an annex to the main agreement, which was essentially a two-state charter for human rights for aliens. There is precedent of a sort for agreements of this kind in the friendship, commerce and navigation treaties which have been so common throughout the Nineteenth and Twentieth Centuries. The important innovation here, though, lies in the fact that this 1965 Dutch agreement covers *all* nationals of each country sojourning in the other, in contrast to the usual friendship, commerce and navigation treaties, which typically only inured to the benefit of traders.

The radical difference between this 1965 Dutch agreement and all the others discussed so far is immediately apparent from Article I, which stipulates a basic right on the part of nationals of the two states to enter, travel freely and remain for permanent settlement in the other one. In other words, the focus now is on allowing individuals to move on their own initiative between the two countries free of the normal restrictions which the law imposes. Only in Article II does there appear a provision for organised migration sponsored by the two governments. Another striking innovation may be found in Article IV, concerning the equality of aliens with nationals "with regard to the constant protection and security of their persons and rights under law." There is express provision in that same article for equality of treatment in respect of access to the courts of the host state generally and to legal aid. Article IV(2) provides specifically for the right of aliens in custody to notify their consular representatives and for the right of such representatives to have access to the detainee. Article VIII guarantees equality of treatment between aliens and nationals in the areas of freedom of religion and of cultural and philanthropic activity (including the right of forming associations for such purposes).

It is slightly ironic that this third Dutch agreement is more cautious in matters of economics — matters which, as noted earlier, were the central concerns of the earlier treaties. Article V, for instance, resembles Article 14 of the third Maltese agreement, in that its provision for equality of treatment with nationals (including, it will be recalled, Australian nationals in the Netherlands) in the social security area is only effective "to the extent permitted by the laws and regulations . . . in force from time to time. . . ."

Article VI is concerned with employment, although in a much broader sense than the treaties considered earlier: it deals with the *right* to employment as such, rather than simply with the terms and conditions of employment once the person in question obtains a job. The principle is that there is to be equality of treatment between aliens and nationals "[s]ubject to the laws and regulations . . . in force from time to time. . . ." Although this general statement of principle is quite liberal, the odd thing is that Article VI(2) immediately goes on to vitiate most of the real effect that the provision would otherwise have, by stating that the "laws and regulations" in question include those restricting certain employments to nationals of the host country,[56] and

that they also include rules generally restricting the establishment of alien-controlled enterprises in the territory of the host state. These limitations to the purported general right of employment are so serious as to relegate the right in question to an isolated statement of principle devoid of practical effect.

As noted above, the annex of this 1965 Dutch agreement sets forth the structure of an assisted passage scheme of the general type outlined earlier. It is not necessary to discuss it in detail, since the innovative parts of the agreement do not lie there. One may merely wish to note in passing that, under Article 11, employment of migrants is to be under the same "general conditions" as those enjoyed by nationals, a slightly different wording from that usually used.

The third German agreement (that of 1965) was concluded at approximately the same time as the third Dutch one just discussed. Unlike the Dutch one, however, this 1965 German agreement is of the traditional type. It therefore need not detain us long. There is a general obligation on the part of Australia (in Article 5) to ensure that migrants receive the same wages and general conditions of employment as nationals in the same type of employment. In addition, though, Article 6 stipulates that if a migrant becomes unemployed for at least fourteen days during his first year after arrival, then the host government must accommodate him at a Migrant Accommodation Centre. The migrant's right to equal treatment with nationals in the receipt of social security benefits here is absolute. Article 8 allows the transfer of "reasonable funds" back to Germany for the maintenance of dependents. There is one innovation in the criminal law field in this third German agreement: Article 9 provides that if the Australian government should issue a deportation order against a migrant, then it must also provide the German embassy with details.

The fact that the third German agreement was of the traditional type, rather than of the sort pioneered by the third Dutch agreement, does not mean that the Australian agreements had ceased evolving. On the contrary, the 1967 Italian agreement was the most innovative one of all, representing (to date) the high-water mark in concern for the human rights of migrants — or, more accurately, of aliens — in Australian bilateral treaty practice. Like the third Dutch agreement, this 1967 Italian one is both a general bilateral charter of rights for aliens and an assisted migration arrangement. Unlike the Dutch treaty, though, this one blends the two together in a somewhat incongruous fashion. For example, there are two different provisions relating to the general right of entry and settlement, one of them, apparently applying only to migrants coming under the organised scheme,[57] and the other

56. Including, in the case of Australia, British nationals.
57. The qualification "apparently" is necessary because the provision in question (Article 4) refers only to "Italian citizens" who are entering Australia "for residence". The other, seemingly more general provision, is Article 24, which refers to "citizens of each country". It is therefore from the context in which the two clauses appear, and not from their wording, that the tentative conclusion in the text is reached: i.e., Article 4 appears at the beginning of the part of the treaty concerned with the organised migration scheme, whereas Article 24, as the text below discusses, is at the beginning of the portion which applies to aliens from the two states generally.

covering persons coming on their own initiative. The latter right (Article 24) is a reciprocal one: nationals of either state have the right of entry into, and free travel within, the other country. The other settlement provision (Article 4) relates only to Italians coming to Australia but is of interest in that it is a sort of human rights analogue of a most-favoured-nation clause: it provides that Italians entering Australia "will be entitled to not less favourable conditions and facilities for settlement than are provided by Australian laws for citizens of other countries of Continental Europe. . . ." There are no other examples in Australian treaty practice in this area of this kind of provision.[58]

The portion of the treaty which is of the greater interest here is the bilateral charter of aliens' rights which begins with Article 24, a list of rights which is, to say the least, imposing. It is so long, in fact, as to preclude any detailed discussion in the present context. The following bare listing of the rights which each state party guarantees to nationals of the other will have to suffice:

(1) A general right of entry and sojourn, "subject to the laws and regulations in force from time to time . . . and to matters affecting [the host country's] national interest, including public order, security, public health and national defence" (Article 24);
(2) Equality with nationals regarding the general protection of the law, with express mention of equality concerning legal aid and access to courts (Article 26);
(3) Equality of treatment regarding freedom of religion and of association (Article 27);
(4) Equality of treatment concerning rights in criminal proceedings (Article 30);
(5) A right of an alien taken into custody to compel the arresting state's authorities to notify his nearest consular representative (Article 31);
(6) A right not to be expelled from the host state "except in accordance with the laws" of that state, combined with an absolute duty on the part of the host state to notify the alien's nearest consular representative of the action being taken (Article 32);
(7) Equality of educational opportunity, at all levels (Article 34);
(8) Equality of treatment in the receipt of social service and national assistance benefits "to the extent permitted by the laws and regulations which are in force from time to time" (Article 35);
(9) Protection from double military service (Article 33);
(10) Equality of treatment regarding the purchase and possession of property and goods, and concerning compensation for expropriation and requisition (Articles 28 and 29); and
(11) Equality of treatment regarding the right to establish business enterprises and to undertake arts and crafts activities (Article 25).

On the subject of the transfer of capital funds (Article 36), the treaty is curiously muted: the two governments "note that the principle of liberty shall operate" in this area and agree that they "shall endeavour to follow that principle."

58. As the discussion below 157–8 points out, the Turkish treaty of 1967 has a similar provision relating, however, only to the context of employment.

The matters just set forth appear in the part of the treaty concerned with the reciprocal rights of nationals of the two states generally. Articles 15-18, on the other hand, are specifically devoted to the rights of migrant workers who come from Italy to Australia under any of the schemes provided for in the earlier articles of the treaty. Here again, this second Italian agreement represents a sharp departure from the traditional post-War treaty pattern. This portion of the agreement guarantees equality of treatment between Italian migrants and Australian nationals (it does not operate reciprocally, as do Articles 24-35 discussed above) in the following areas:

(1) The right to enter employment, "taking account of any Australian laws and regulations relating to entry to employment, profession, trade or business" (Article 15). In contrast to the 1965 Dutch agreement, there is no indication here as to whether the "laws and regulations" in question include those which specifically impose restrictions on aliens.
(2) Rights, obligations and working conditions generally in matters relating to employment, including the right to change employment (Article 16);
(3) The right to join and participate in the affairs of trade unions (Article 17);
(4) Eligibility for representation in proceedings before Australian courts and tribunals on employment matters (Article 18);
(5) Allocation and purchase of homes under government (but not private) housing programmes (Article 19); and
(6) Eligibility to apply for vocational training and to receive assistance after such training from the Commonwealth Employment Service (Article 20). Note that it is not a right to vocational training as such.

One should also take note of the provision in Article 18 that Australian authorities are to inform Italian consular authorities of the death or of the contracting of certain types of disease by Italian workers in the course of their employment.

If the 1967 Italian agreement represents the high point, to date, of concern for human rights in Australia's migration and settlement treaty practice, then the final two agreements to be considered here — those with Turkey (1967) and Yugoslavia (1970) — represent striking departures from past practice in other ways. For one thing, they are the first forays, apart from the three Maltese agreements already discussed, into southern and eastern, as opposed to northern and western, Europe on Australia's part. Of greater importance is the fact that these two agreements, unlike their Maltese predecessors, contain quite a wealth of human rights provisions, although neither one is a general settlement agreement of the Netherlands and Italian types discussed above.

The Turkish agreement will be discussed first. It contains the now-standard guarantee of equality of immigrant workers with Australian nationals with respect to wages, working conditions, protection by safety legislation and related matters (Article 18). There is the additional twist, though, that in this area — although *not,* as in the 1967 Italian agreement, in the area of settlement generally[59] — there is a most-favoured-nation-type of guarantee. The

59. See above p 156.

Turkish workers are guaranteed equality in these employment-related areas not only with Australian nationals, but also with other foreign workers. This point would appear unlikely, however, to be of great practical significance. There is also provision for equality with Australian nationals (no mention of other foreign workers here) in eligibility for vocational training and, following such training, for assistance from the Commonwealth Employment Service in the locating of an appropriate job.

In the area of housing, the Turkish treaty goes beyond earlier agreements, in that it contains a general right of equality of treatment with nationals "according to the legislation in force in Australia" (Article 12). Earlier agreements, it will be recalled, contained such a guarantee only in cases where employers provided housing for employees. Another advance in this Turkish treaty over past practice is found in the obligation on the part of the Australian government to investigate certain types of complaints about housing, although this obligation *is* confined to cases in which employers provide the housing. The basic duty is to investigate any complaint either that the accommodation is unsatisfactory or that the rent charged is higher than that paid either by Australian nationals or by other foreigners in the same area. The government must then take "whatever steps may be appropriate" (Article 15).

The provisions of the Turkish treaty concerning the transferring of funds to the migrant's home country are more elaborate than those in other agreements. The basic rule (in Article 19) is that "[s]ubject to financial regulations in force at the time of transfer," the workers may transfer to Turkey "funds necessary for the support of their families. . . ." There is also, however, an express provision for the transfer of lump sum payments (such as retirement benefits, disablement benefits and the like): these can be transferred upon the permanent departure of the worker "under conditions not less favourable than those applying in respect of any other resident of Australia." Even though this Turkish treaty was theoretically intended to promote permanent settlement in the same manner as the other assisted passage treaties, the inclusion of such an article as this one indicates that the drafters had in mind that at least some proportion of the migrants would be in Australia for relatively short terms only, primarily for the purpose of working rather than settling.

One final innovation of the Turkish agreement is in the area of cultural rights. The Australian government is to "suggest" to employers that part of the paid leave of Turkish workers be granted on Turkish national and religious holidays (Article 20).

Unfortunately, the Turkish treaty, liberal though it may be in the human rights area, in the event did not prove successful. One reason is that the Turkish workers apparently seldom intended actually to settle in Australia, preferring to regard themselves as merely "guest workers" on the model of Turkish relations with the various labour-importing countries of western Europe. The chief interest of the workers, then, was not to integrate themselves into Australian life, but rather to amass funds from limited periods of work at (by Turkish standards) high wages and then to return to the home

country. The agreement accordingly was terminated in 1974 (in accordance with Article 28).[60]

The last agreement in this discussion is the Yugoslav treaty of 1970. It also is not a general settlement on the model of the Netherlands and Italian agreements of 1965 and 1967 respectively; but it does compare favourably with them in the sweep of human rights guarantees which it provides. The sweep is so broad that, once again, it becomes necessary in the present context to confine the discussion to a basic list of the rights concerned. The agreement provides for equal treatment of Yugoslav migrants with Australian nationals in the following areas:

(1) Conditions of employment generally, including the freedom to change employment and the protection of laws relating to health and safety at work; also the right to receive unemployment benefit and workmen's compensation. More generally, there is equality as well in "all other matters provided for by Australian industrial laws and regulations" (Article 2). Express guarantees of equality with nationals is also provided for in the areas of the joining and participation in trade union activities (Article 12) and in proceedings before courts and tribunals in labour matters. In this last area, there is a provision that "[w]here it is not contrary to established Australian laws," Yugoslav diplomatic or consular officials may attend hearings (Article 14);

(2) Housing, "[s]ubject to laws and regulations in force in Australia." If the housing is provided by the employer, then the host government (as in the Turkish agreement) is required to investigate any complaints of unsuitability or of discriminatory treatment in levels of rent charged (Article 4);

(3) Education. This right includes the right to attend schools of every type in Australia (Article 6). It also includes equality in eligibility for vocational training and for the assistance, following such training, of the Commonwealth Employment Service (Article 6). In addition, the Australian government is to use its good offices to encourage the offering of special courses for Yugoslav children, to facilitate their integration into the Australian educational system (Article 11). The two states also agreed to arrive soon at an arrangement on the recognition of Yugoslav degrees and qualifications and the like (Article 8);

(4) Social, cultural and recreational activities generally, together with freedom of religion, again "[s]ubject to the laws and regulations in force in Australia" (Article 9). This right (and the limitations on it) also applies to the establishment of "appropriate societies". There is also a provision (in Article 11) for Australian and Yugoslavian diplomatic and consular missions to cooperate in measures to allow the children of Yugoslav workers the opportunity to learn their mother tongue;

60. Price, op cit, 45.

(5) Protection of person and property generally, including access to ordinary courts and to legal aid (Article 13);
(6) Rights in criminal proceedings (Article 13). In addition, aliens who are arrested must be informed of their right to notify their diplomatic or consular missions; and those missions are guaranteed access to the person, "subject to laws and regulations" (Article 15);
(7) Transferring of funds, "[s]ubject to financial regulations in force at the time of transfer" (Article 5). This article includes an express provision for the repatriation of all savings "and other assets" upon the permanent departure of the worker from Australia — the right being not an absolute one, as might be more appropriate, but rather one of equal treatment with nationals of Australia.

Finally, one may take notice in passing of Article 20, which provides protection against double obligations of military service, comparable to that of the 1967 Italian agreement pointed out above.

Conclusion

The human rights developments with which the article has been concerned have largely escaped the attention of the world at large, in substantial part because of the piecemeal way in which they have emerged. It would appear to be inaccurate to say that there has been a conscious programme on the part of the Australian government to provide an extensive set of human rights guarantees for immigrants (for immigrants, that is, who have been fortunate enough to be admitted to the country in the first place). The conclusion of this study, though, is that there has been such a *pattern* in the post-World War II Australian treaty practice, discernable to those who make a close investigation of the matter. It would be difficult at this stage in history to deny that, in the case of Australia at least, there now exists a firmly grounded expectation that immigrants to the country will be entitled to benefit from a broad range of human rights measures which may be succinctly summed up in a single phrase: equality of treatment with Australian nationals.

The question which now immediately suggests itself is: to what extent are such "firmly grounded expectations" to be equated with legal norms in the true sense of that term? The more cautious approach to this issue would be to attach little significance to this treaty pattern, on the ground that such rights as have emerged in this area are all firmly grounded in traditional positive international law. That is, they have their basis entirely in treaties and not at all in customary international law. Rights which are granted in this year's treaty can equally easily be withheld in next year's.

An argument of that kind fails, however, to distinguish between (on the one hand) *particular* treaties as sources of *particular* rights and obligations, and (on the other hand) consistent treaty practice as a source of *general* norms of customary international law. It is true that the traditional view was that host countries could treat aliens differently from nationals (so long as certain minimal standards of treatment were observed).[61] It is also true that all of the

61. This concept that there is an international minimum standard of treatment to which aliens (but not nationals) are entitled under customary international law has long been — and still

human rights advances which this article has discussed have appeared in specific treaties, none of which purported to be restating customary international legal norms. What is *not* true, though, is the contention that norms which arise initially in treaty provisions can never *become* customary law.

To put the matter more succinctly, there is no general rule of international law to the effect that "once a treaty right, always a treaty right." To hold such a belief would be to take an unjustifiably static view of the nature of international law generally. If customary international law is ever to evolve — and it would seem inconceivable to maintain that it should not — then there must be some kind of mechanism through which new norms can be generated. There could scarcely be a more appropriate mechanism, it is submitted, than the bilateral treaty process, which has the great advantage that it is based on what states actually do (in contrast to, say, UN General Assembly resolutions, where the emphasis is discouragingly heavy on what states merely say).

In short, the contention that a consistent pattern of treaty practice cannot, by its very nature, operate to advance customary international law amounts (or rather descends) to the contention that customary international law must remain static while the real world around it changes. Such a belief must be rejected.

The conclusion to this study, then, is that the Australian treaty practice since World War II represents an important pioneering development in the international law relating to the human rights of aliens — not simply in the obvious (and trivial) sense that the Australian practice is "better" than that of most other countries, but also in the less obvious (but more significant) sense that the Australian experience constitutes an important development of the law *itself* in this area. It is likely to be some considerable time yet before the standard treatise writers in international law will begin to state as a matter of "black-letter" law that aliens have a general right to equality of treatment with nationals. It is also likely that when they come to do so, they will cite the Australian experience as an important early step in that direction.

---

remains — a matter of the fiercest controversy. It is not the intention of this discussion to enter into this fray on one side or the other.