

# BOOK REVIEWS

EVATT: A LIFE / PETER CROCKETT  
Melbourne : OUP, 1993 \$44 95

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"Doc Evatt" was a name I heard my father using many times when I was a little girl. In Dad's opinion Evatt was a great Australian, an intellectual and "they had done him wrong". Many people still believe that this was so. Accordingly I was most interested to read Crockett's account of this controversial Australian.

In his review of the biography, Peter Ryan (*Sydney Morning Herald*, 13/11/93) considered Evatt to be a "monster who resembled Stalin". This opinion was subsequently deprecated by John Rickard (*The Age* 4/12/93). Ryan then wrote to *The Age* noting that Crockett's book contains ample evidence to support his view. He points to top public servant Peter Heydon's comment that Evatt "used the methods of the police state". He also claims that Evatt kept the "harmless writer P R. (Inky) Stephensen in jail for three years without trial, because he didn't like him". This, according to Ryan is evidence of "the Stalin touch".

In a sideways dig at Rickard, Ryan concludes by stating that *he* always avoids reading the reviews of other critics until after his own have appeared, "It helps me to preserve a fresh approach, and avoids misunderstandings". But this is "history" and history is created by opinion, claim and counterclaim. For that very reason this reviewer makes a point of reading not only the text, but also any available reviews. The reviews are an indicator of the amount of interest in the subject (highly relevant to selection librarians) and of the ferment in the field which men like Evatt continue to generate long after they have cast off the

mortal coil. Justice Michael Kirby, for example, has praised Evatt's "practical idealism" (inaugural Herbert Vere Evatt Memorial Address 1991), while others consider him to be either a hero of the Left or a tyrant.

Ryan's charge that Evatt was prepared to infringe personal liberties when it suited him has basis in Crockett's account. However, it is interesting to note that an assessment of what is considered as a "gross infringement of personal liberties" is often tied up with the political ideology of the writer. Gerard Henderson (*The Age* 4/1/94) defends Inky Stephensen, the right wing nationalist leader of the Australia First Movement. Henderson acknowledges that the AFM "was an unpleasant organisation, but there was no evidence that Stephensen was ever a threat to national security". The official war historian Paul Hasluck in *The Government and the People 1942-1945* referred to Evatt's jailing of Stephensen as "undoubtedly the grossest infringement of individual liberty made during the war". There was no doubt that Evatt put the boot very firmly into Stephensen whom he interned for three and a half years without trial. Crockett implies that Evatt's reasons had more to do with the fact that Stephensen bagged him in a book review! Gerard Henderson writes: "Inky got three and a half years in the slammer because Evatt resented his literary criticism". Evatt is depicted as a man who was a civil libertarian in opposition, but an authoritarian in government - not the only one we've ever seen in this country.

So who was Herbert Vere Evatt? Lawyer, intellectual, politician, Attorney-General, Chief Justice of the New South Wales Supreme Court, High Court judge. A great fighter for

international recognition of Australia, he was elected the third president of the UN's General Assembly. His biographer presents him as a man whose "extreme suspiciousness excited an unpredictability and misjudgment which led others to expect unreasonableness". His "concern for the underprivileged moderated his offensiveness". He was a champion of unpopular causes, a nationalist who considered the promotion of a distinct Australian identity as a matter of fundamental liberty, and he was a specialist in constitutional law.

Crockett presents Evatt as a man who achieved high office and international fame but who, at the same time was capable of spectacular failures. Failures, which occurred because of Evatt's own misjudgments. Ultimately it was a polarised political Australia which "plagued and in time would destroy Evatt's political career".

So why would this work be of value in a law library? It is scholarly, fascinating, controversial and covers material pertinent to the way in which law cases may be influenced by personalities. Crockett's "big man" approach to history is somewhat unconvincing given that Evatt alone seems to bear the blame for occurrences which involved many important players. Still, the primary function of the biographer is to focus on Evatt and Crockett convincingly describes both his successes and failures, possibly over-emphasising the failures. After all, the fact that Evatt lost a cause does not of itself mean that the cause was not worth pursuing. In spite of the "failures" Evatt retained great faith in the ability of the law to settle disputes and provide justice. As Attorney-General his vision was for an Australia which would be prosperous and equitable.

Evatt hardly practised law, though he took silk in 1929 and was appointed to the High Court in 1930 at the age of 36. He was

involved in some of the most controversial decisions ever made by the High Court pre-Mabo. In the *Irish Envoy's Case* (1923) CLR 518 Evatt, as a junior failed to prevent the deportation of Father Michael O'Flanagan and John Joseph O'Kelly who had come to Australia to collect money for the families of men killed while fighting in the Sinn Fein Irish Republican Army. The failure was spectacular in that it permitted the loss of power of the legislature and the judiciary.

Nationalisation of the country's private banks was high on Evatt's agenda for reform. The *Bank Act 1947* instructed the Commonwealth Bank to provide adequate banking facilities. The majority of the High Court declared most of the Act invalid on the grounds that it purported to give authority to the Bank to acquire bank property and to prohibit private banking. A Privy Council appeal, based on a prediction of success made by Evatt, also failed.

Evatt's interpretation of section 92 of the Constitution was that it permitted "free trade". His belief in the soundness of his own interpretation was absolute and transcended considerations of ideology or finance. His view became known as the "discrimination theory". It was not shared by Sir Owen Dixon who, in a number of dissenting judgments, held that the trade and commerce power was much broader. Dixon's interpretation, known as the "individual right" theory, was accepted when the High Court Bench was differently constituted from the early 1940s. Final defeat for Evatt's view came in the 1948 *Bank Case* in which the majority supported the private banks and held that the Act impaired the freedom of interstate trade.

Evatt was not a happy man. His view that he was correct was unshakeable and Crockett records that Evatt "doggedly, insensitively, lectured" the Privy Council for a record.

seventeen days. The High Court's decision was upheld by the Privy Council in 1949.

In November and December 1950 Evatt was back in the High Court as an advocate challenging the validity of Robert Menzies' attempts to abolish the Communist Party of Australia. Although he was himself a firm opponent of communism, Evatt believed that political parties had a democratic right to exist. The majority of the Court accepted this and also held that Australia's defence was not endangered by that doctrine (*Australian Communist Party v The Commonwealth* (1923) 83 CLR 1). Menzies did not give up however and in September 1951 he revived attempts to ban the Communist party. Evatt, without much support from the Labor Party, achieved "his most distinguished accomplishment" in ensuring the success of the subsequent referendum.

Evatt's political career, especially his time as Attorney General, is also relevant to legal researchers. Elected in 1925 to the New South Wales Legislative Assembly he represented Balmain in the first government of Jack Lang. He resigned from the Bench on 2 September 1940, Crockett says, either to fulfil his own ambitions, or to assist the war effort. It is conceivable that Evatt was motivated by both altruism and personal ambition.

The election, held on 21 September 1941, was very close. It was won by a coalition known as The United Australia Party, led by R G Menzies. However it was Labor which took power in October that same year when two independents went over to the ALP "largely through the agitation of Evatt". His reward was the portfolios of External Affairs and Attorney General in John Curtin's government. Evatt retained these posts until 1949.

Following its defeat at the 1949 election the ALP elected Evatt as its leader. The vacancy

occurred when Ben Chifley died in 1951. Evatt remained as leader until 1960 when he resigned from politics. During that time the ALP was never elected to government. Crockett claims that the "catastrophic split" in the ALP of 1954-55 was "provoked by its leader".

In the context of the "Petrov Affair" and the subsequent Royal Commission on Espionage two of Evatt's employees were charged with receiving documents from Petrov. Evatt represented them before the Commission, which rejected his arguments and withdrew his permission to appear because of public statements made by him about the Commission.

My favourite quote about Evatt appears in the Introduction. It is from Colin Moodie who recalled Evatt's capacity to have one "on the edge of one's seat in case of a sudden accusation", and at the same time, "Relaxed, he could make you feel as if you'd caught a wave that was bringing you into shore". Evatt according to Moodie had the "power of wise thoughts conveyed in everyday language".

The controversy generated by Doc Evatt is similar to that in the case of Justice Lionel Murphy and remains indicative of deep division in Australian society today. The book is fascinating and very well written but left this reader with the feeling that Crockett's judgments are based on values which I do not share. A good example of this is his assessment of Evatt's lifelong loyalty and devotion to his wife, Mary Alice, as being some kind of personal failing. Crockett's account does not support my old Dad's interpretation that the forces of conservatism conspired to defeat Doc Evatt. Many people, however, will continue to hold that view.

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**AN AUSTRALIAN CHARTER OF RIGHTS /**  
**MURRAY R WILCOX**

Sydney: Law Book Company, 1993 \$75.00

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It appears inevitable that constitutional rights will continue to occupy the attention of Australian courts, legislators, lawyers and the wider public. This timely and useful book provides an excellent introduction to the problems in this area

Any examination of constitutional rights demands a comparative approach, which this book provides. It commences with a short section on the United States Bill of Rights and its interpretation by the Supreme Court. There is, of course, a vast amount of literature on this topic, and the author has concluded that little is to be gained from more than a cursory examination. This, to my mind, was a very sensible decision

The bulk of the book is devoted to the Canadian Charter of Rights and Freedoms, which, being a modern document, is much more relevant to the Australian situation than the US Bill of Rights. This section is primarily descriptive, clearly and concisely setting out the law with respect to each particular right.

The third section considers proposals for the incorporation of a written "Bill of rights" into the Australian Constitution. The author

considers the growing body of decisions of Australian courts in the light of Australian developments, dwelling in particular upon the recommendations of the Constitutional Commission in 1988. These, together with the text of the United States Bill of Rights and the Canadian Charter, are helpfully included in appendices

If any single thing can be said to be missing from the book, it is the text of the New Zealand Bill of Rights, accompanied by a short chapter expounding its legislative history and decisions made. Nevertheless this book is a very useful resource indeed. Many of the 923 footnotes are discursive; they provide an easy way into the literature, both decisions of courts, and academic writings.

Developments in this area proceed at a very fast rate. Since publication, the High Court has delivered judgment in *Cheatle v The Queen* (1993) 67 ALJR 760; 116 ALR 1 which renders a rewriting of the section on s.80 of the Constitution, one of the few sections explicitly guaranteeing rights. And there are a number of important cases presently reserved dealing with the scope of s.51(xxxi) and the implied freedom of communication. This all serves to indicate, of course, that the subject matter of the book is extremely topical. Few people would fail to gain from reading this work.

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