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Who's Who in the Legal Zoo – H.V. ('Doc') Evatt

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Herbert Vere Evatt is one of the most fascinating members of Australia's legal zoo. In fact, it is easy to argue that he is one of the most interesting politicians and jurists in Australia's history. Not only was the 'Doc' – the name most knew him by (we'll get to that)- the youngest ever High Court judge, he was also, in his long and varied career, a member of Parliament (first in the New South Wales parliament, then in the Commonwealth parliament) and the Commonwealth Attorney General, Minister for External Affairs (what is equivalent now to Minister for Foreign Affairs), Leader of the Opposition in the Federal Parliament (for the Labor Party), Chief Justice of the New South Wales Supreme Court, first President of the United Nations General Assembly, and first Chairperson of the Atomic Energy Commission…all in one lifetime!

Evatt was known to many of his friends (and enemies) as the 'Doc' due to the fact that he had been awarded two Doctorates. Evatt was born in East Maitland in New South Wales in1894, and was educated at Fort Street High School, Sydney, and later the University of Sydney. He was a brilliant scholar and attained the degrees of BA (triple 1st class honours and University Medal), MA (1st class honours), LL.B. (1st class honours and University Medal), and a Doctor of Laws in 1924 at the age of 30 – the same year he became a barrister. He was later awarded the honorary degree of Doctor of Letters. At the age of 31 he entered the New South Wales parliament. Five years after becoming a barrister he 'took silk' (became a King's Counsel) and the year after that, at the age of 36, he was appointed as a judge of the High Court.

Only four years later he resigned his High Court appointment to enter the Federal Parliament where soon after, he was made Commonwealth Attorney-General and Minister for External Affairs. This was during the Second World War, when Evatt led Australia's missions to Washington and London in 1942 and 1943. He was also a member of the British War Cabinet, and was appointed a Privy Councillor (at this time, appeals from Australian Courts could be heard in London in the Privy Council, meaning effectively it was a 'higher' court than the local Australian High Court).

Doc Evatt on the international scene

In 1946, after the war was over, Evatt led the Australian delegation to the Paris Peace Conference and chaired the British Commonwealth Conference on the Japanese Peace Treaty. As head of Australia's delegation to the meeting that founded the United Nations in San Francisco in 1945, he

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included a woman in the delegation – Jessie Street – an unusual act at a time when there were very few high profile female politicians. He became President of the 1948-9 session of the UN General Assembly, was the first chairman of the UN Atomic Energy Commission and chairman of the Palestine Commission. In this latter role, he laid the foundation for the State of Israel. Dr Evatt was the only Australian to have ever held the position of President of the General Assembly of the United Nations, and as part of this role he presided over the adoption and proclamation of the Universal Declaration of Human Rights, the cornerstone of human rights protection throughout the modern world. According to Evatt:

> It was the first occasion on which the organised community of nations had made a declaration of human right and fundamental freedoms …millions of people, men, women, and children all over the world, would turn to it for help, guidance and inspiration.[1]

Labor leader and the Communist Party case

After the war and the death of the Labor party leader Ben Chifley in 1951, Doc Evatt led the Labor party in opposition to Liberal Prime Minister Robert Menzies. During this time, Evatt led the opposition to Menzies' anti-Communist Party legislation, leading to that legislation being struck down by the High Court. This case was one of the most significant constitutional law cases in Australian legal history. It opened on 14 November 1950 and ran for 24 days (by way of contrast, the 2006 'Workchoices' challenge ran for only 4 days). The Commonwealth was represented by Sir Garfield Barwick KC (later Chief Justice of the High Court) and nine other counsel – two of whom would themselves be appointed to the High Court bench. Twenty-two counsel appeared in all. Controversially, Doc Evatt (still opposition leader) appeared as counsel for the Communist Party. The importance of the case is highlighted in a comment by Professor George Winterton:

> The *Communist Party* case demonstrated that our freedom depends on impartial enforcement of the rule of law, of which courts are ultimate guardians. Although, of course, not infallible, impartial and fearless courts determined to exercise their proper powers are our final defence against tyranny…[2]

It could be added, that not only is a fierce dedication to justice and the rule of law vital from our courts, but without fearless advocates that are willing to stand for sometimes controversial causes (as the opposition to the *Communist Party Dissolution Act 1950* was portrayed at the time), those very courts would not have the opportunity to so exercise their powers. Evatt was one such advocate.

The Doc was not only a highly successful barrister, also a prolific writer – especially in the area of legal history. His works included *The King and His Dominion Governors*, *Injustice within the law*, *The Rum Rebellion*, and *Australian Labor Leader*.

Final years and legacy

Doc Evatt's career ended with some controversy, with the Doc suffering a nervous breakdown in 1962, forcing him to retire from the Supreme Court. He died in Canberra in November 1965, where the suburb of Evatt is named in his honour. It is claimed by some that Evatt had various forms of undiagnosed mental illness, which led to erratic behaviour in his final years, from prior to his appointment to the NSW Supreme Court. Most biographies of Evatt reject this, although they agree he became increasingly eccentric towards the end of his career. In the 1995 television documentary *Doc*, the documentary makers attributed Evatt's 'deteriorating mental functioning' to arteriosclerosis.

At the time of his death, Sir Garfield Barwick, speaking of the Doc's time on the High Court said:

> To the decision of such of these cases in which he participated, Herbert Vere Evatt made great contributions. His judgments in many of them provided forceful and lucid expositions and applications of the law. Many of such judgments examine and relate to each other in a masterly fashion the precedents of the past with which he made himself so precisely conversant as he applied himself so unstintingly to the pursuit of the answer to the problem with which each case in its turn posed for decision. They disclose extensive and penetrating scholarly research which illumines the aspects of the law with which they deal. These judgments will long be used by students and teachers of the law, by practitioners and the courts of law. [3]

But HV Evatt was also considered one of Australia's most successful 'activist' judges. Evatt's approach to the law can be summed up in his own words:

> There are many problems of legal right and wrong in which precedent must coerce the Court so that no evolutionary development is possible. But there are very important branches of jurisprudence which are not to be regarded as closed legal systems, and which I myself have regarded as always capable of further development or of adjustment to the changing needs of modern society. In relation to them, I would like to say (as Mr Justice Isaacs said of the late Mr Justice Higgins) that I have always searched for the right with a lamp that was lit by the flame of humanity. I have tried to follow such illustrious examples as those of Holmes and Cardozo in the United States and Atkin and Wright in England. It is for others to say whether I have succeeded.[4]

Although he was regarded by many as a difficult and sometimes abrasive individual, there is no doubting Doc Evatt's brilliance and his contribution not only to Australian law, but to the nation – and to the world.

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1 Cited at 'Doc Evatt; A brilliant and controversial character' at <http://evatt.labor.net.au/about_evatt/> last accessed 5 March, 2010.

2 George Winterton, 'The Communist Party Case', in George Winterton and H. P. Lee (eds) *Australian Constitutional Landmarks* (2003)108 at 135.

3 Sir Garfield Barwick, cited in 'Obituary: Herbert Vere Evatt' (1965) 39 *Australian Law Journal*, 250.

4 H. V. Evatt, On the occasion of his retirement from the High Court, cited in 'Personalia; The Chief Justice of New South Wales' (1960) 22 *Australian Law Journal,* 381.

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Something to think about…

Who were the other judges that sat on the court with Justice Evatt?

Would you give up being a high court Judge to become a politician?

Max Dupain, Portrait of H. V. Evatt sitting at a desk, 1951, nla.pic-an25060678, National Library of Australia.

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