Review Essay

Doc Evatt: "Justice is the Thing"

The Brilliant Boy: Doc Evatt and the Great Australian Dissent by Gideon Haigh (2021), Scribner, 378pp, ISBN 10987654321

Prue Vines*

Abstract

The Brilliant Boy, by Gideon Haigh, traces the life of HV Evatt, pivoting it around the case of *Chester v Waverley Municipal Council*, in which Evatt J, on the High Court, gave an extraordinary dissent that ultimately led to legislative change to the law of negligent psychiatric harm. The case is an interesting example of the range of judgments that might be given under the 'strict and complete legalism' approach espoused by Dixon J. Haigh's book offers a view of Evatt's life that illuminates his judgments and political roles, including appointments as a judge on the High Court, Chief Justice of the Supreme Court of NSW, State and Federal Member of Parliament, Leader of the Opposition, President of the United Nations General Assembly and Federal Minister for Foreign Affairs as well as major scholarly works. His relationships with his wife and family were close and loving throughout his life and Evatt had a keen eye for the vulnerable. In *Chester* his great achievement was to empathise deeply with the distraught and show this by his use of poetry, but without the loss of the rigour the case demanded. He said 'Justice is the thing' and we see evidence of this throughout his life and work.

Please cite this review essay as:

Prue Vines, 'Review Essay: Doc Evatt: "Justice is the Thing"' (2022) 44(1) *Sydney Law Review* 153.

* Professor, School of Private and Commercial Law, Faculty of Law & Justice, University of New South Wales (UNSW), Sydney, Australia..
Email: p.vines@unsw.edu.au; ORCID iD: https://orcid.org/ 0000-0002-0458-6091.

I Introduction

The central paradox of the common law's use of the doctrine of precedent is the fact that although cases must follow the precedent set by the court above them, the law does change. The relationship of the law to justice is similarly fraught with contradiction. Law is not always just, but lawyers frequently strive for justice in the law and judges may wish to change the law in order to achieve what they see as justice. The constraints on judges in the doctrine of precedent are real, despite the common calls about 'judicial activism'. The High Court of Australia's use of strict legalism lasted until the 1980s and then returned in the 2000s.[1] Strict legalism[2] was supposed to be a clear constraint on judges, being very focused on strict rules of the common law: use of ratio decidendi and argument by analogy, and avoiding social and non-legal factors including political arguments. This was the environment in which Evatt J gave his great dissent in *Chester v Council of the Municipality of Waverley*,[3] which did create legal change, albeit not for the appellant in the case. HV (Herbert Vere) Evatt himself had an extraordinary career, which included being a barrister, political offices of various kinds, and judgeships. In this way, *The Brilliant Boy: Doc Evatt and the Great Australian Dissent*[4] is an excellent vehicle for considering the real operation of law in Australia, both in Parliament and in the courts. Moreover the particular focus on *Chester* creates a picture of the lives of the participants — the plaintiff, lawyers and judges — as well as the treatment of the law itself.

In 1937, seven-year-old Max Chester (originally Sochaczewski, but renamed as an immigrant) was found drowned in a trench measuring 12 metres long by half a metre wide. The Waverley Council workers had left it marked with some planks and with lights to warn traffic, but with no barricade capable of stopping a child falling in. It was nearly two metres deep with water and children had been challenging each other to leap across it. When Max was found, his mother Golda and other adults had been searching for him for several hours. When his body was found her distress could not be alleviated and had been going on for over a year when Abram Landa, acting for her, lodged a writ in the Supreme Court of New South Wales ('NSW') for negligence occasioning nervous shock.[5]

This action failed at trial and in the Full Court of the NSW Supreme Court. It then went to the High Court of Australia on appeal. The tragedy of Max Chester's death gave rise to Evatt's dissent, which was so persuasive that the NSW Parliament changed the law to recognise the psychiatric injury suffered by people such as Max's mother.

---

1 Tanya Josev, *The Campaign against the Courts: A History of the Judicial Activism Debate* (Federation Press, 2017) 92.

2 Sir Owen Dixon, 'Concerning Judicial Method' (1956) 29(9) *Australian Law Journal* 468, reproducing an address given at Yale University on receiving the Howland Memorial Prize.

3 *Chester v Council of the Municipality of Waverley* (1939) 62 CLR 1 ('*Chester*').

4 Gideon Haigh, *The Brilliant Boy: Doc Evatt and the Great Australian Dissent* (Scribner, 2021).

5 Name changes were a common part of immigrants' stories. This went further in this case, as Abram Landa (who is also a hero in this story) suggested that Golda change her name to Janet in order to avoid any lurking anti-Semitism. So Janet Chester, rather than Golda Sochaczewski, brought the action against the Council of the Municipality of Waverley.

II Evatt's Early Career

Most of the book and the 'brilliant boy' concerns Evatt's career, but that description also was used by Max Chester's mother of 'Maxie' himself, a nice linkage used in the title. Evatt himself was very close to his mother, who was a reader and singer, and who moved the family to Sydney for his benefit. Evatt was the fifth of eight brothers, two of whom died of typhoid when young. He lost two brothers in World War I, which scarred the family deeply. He himself was rejected from the military three times because of astigmatism. These deaths appear to have made the family deeply concerned about health, and Evatt became renowned for his concerns about health, constantly worried about incipient colds or flu, sleeping in fresh air, but worrying about draughts. At Sydney University he won first class honours in English, philosophy and mathematics before going on to do law. At the same time he was passionate about rugby and cricket, and played both.

By the time he was 30 years old, Evatt was a standout at the Bar. He was regarded as the most significant product of public education in Sydney, his soubriquet 'Doc' referred to his receipt of a Juris Doctor from University of Sydney (not the equivalent of the modern JD, but a higher degree) for a thesis on the Crown's prerogative powers. In chapter 2 of *The Brilliant Boy*, we are shown Evatt at home with his wife Mary Alice exhorting her to read books to share with him; when separated each writing heartfelt letters to the other, a habit that lasted all their lives. Haigh notes Evatt's habit of quoting verse, which also appears to great effect in his *Chester* dissent.

Evatt's Labor sympathies came early along with his strong sense of being Australian. In a speech to state school students he said: 'Do not forget Australian writers, because I am trying to be one myself. (Laughter).'[6] His involvement in the Labor Party was not without struggle. According to Haigh, Evatt had thought his way to his position, and his intellectual approach did not always go down well with others in the Party: 'He seemed not so much to want to join the party as to want the party to join him'.[7] In 1924, Evatt became legal adviser to the Labor Party and then chair of its policy-making committee. He won the election for state member for Balmain and entered NSW Parliament in Jack Lang's Government, in which Edward McTiernan was Attorney-General. McTiernan introduced a bill to abolish the death penalty, and Evatt then led the debate. Its passage was thwarted by the Legislative Council. This was a tumultuous time in politics, and Evatt and Lang crossed swords. Evatt was re-elected in 1927, but Lang's party lost government and Evatt left his electorate in 1929.

III To the High Court and *Chester*

In Chapter 3, 'The Legal Phar Lap', Haigh considers the next stage of Evatt's career. He appeared in several 'political' cases including representing several unions in high profile cases. These were political often because they involved unions. His brother,

---

6 Haigh (n 4) 51.
7 Ibid 55.

Clive, and Abram Landa were close and Evatt was briefed often by Landa, especially in workers' compensation cases. Evatt's reputation grew until *Smith's Weekly* referred to him as 'The Legal Phar Lap' and he took silk in 1929. While Prime Minister Scullin was away, the Labor caucus appears to have engineered the appointment of Evatt, then aged 35, and McTiernan, aged 38, as High Court judges. Both had served in Labor Governments. This scandalised many. The Victorian Bar talked about 'the degradation of judicial office'[8] and the South Australian Law Society similarly disapproved. Evatt remains the youngest High Court judge ever appointed, and McTiernan ran him a close second.

What was the High Court like at the time? The reception of Evatt and McTiernan was chilly. Owen Dixon J said of them 'Evatt — brains without character; McTiernan — character without brains'.[9] The Nationalists put a motion of no confidence in the Government for having made political appointments to the Court, which was just defeated. At this time, there was no High Court building and the Court sat mostly in the Darlinghurst Courthouse in Sydney. Budgets were tight — it being the Depression, and some of the judges took pay cuts, while others waived travel allowances; a library was lacking. It was also the era of another bellicose Lang Government in NSW. Lang attempted again to abolish the Legislative Council, but was tactfully resisted by Governor Game. Evatt was probably the expert on the royal prerogative in Australia at the time and he was shocked when Lang was dismissed by the Governor and Lang accepted it. In Evatt's view, it was inappropriate for the Governor to terminate for illegality when the courts were the proper forum for determining illegality. In *R v Hush; Ex parte Devanny*,[10] a case concerning whether a call for funds in the *Workers' Weekly*, the official organ of the Communist Party of Australia, breached the *Crimes Act*'s prohibition of solicitations of contributions by unlawful associations, Evatt J gave a remarkable judgment that included a broad discussion of political philosophy:

> In the ultimate ideal of a classless society, the Communist movement has much in common with the Socialist and working-class movement throughout the world. They all profess to welcome a revolutionary change from the present economic system, which, conveniently enough, is called Capitalism, and the more violent protagonists of which are now called Fascists. … It is not a question whether it is desirable to have a struggle between a property-less class and a property-owning class, but whether such struggle exists in fact. The Communists claim that democratic institutions conceal, but do not mitigate, the concentration of political and economic power in the property-owning class, and that, for such dictatorship there should be substituted the open, undisguised dictatorship of the property-less classes. They say that it is extremely probable that violent upheaval will ensue when the time comes to effect such substitution. … The history of the attempts and failures of Communism to gain control of other political movements of the working classes may tend, upon close analysis, to show that, to turn the phrase, Communism illustrates the gradualness, the extreme gradualness, of inevitability.[11]

---

8 Ibid 85.
9 Ibid 89.
10 *R v Hush; Ex parte Devanny* (1932) 48 CLR 487 ('*Hush*').
11 Haigh (n 4) 109–10, quoting *Hush*, ibid 517–18.

This was not the central issue in the case; it may have been the deeper social issue, but it does illustrate Evatt's fearlessness of disagreement and the extent to which political considerations were part of his view of society and law. This could not be said to be part of a judgment using a strict and complete legalism. It is of interest, but of course, it could not be part of the ratio decidendi of the case, and was strictly obiter dicta at the time. Now that the High Court has said that dicta of the High Court should be considered carefully by lower courts,[12] such dicta might be regarded as more significant and more troubling than they appeared to be in the 1930s.

In chapter 5 of *The Brilliant Boy*, we return to the domestic front and Evatt's other interests. Evatt the husband was devoted and tried to keep his wife Mary Alice with him as much as possible. Evatt the father was both indulgent and disciplinarian and clearly concerned about ill-health. Evatt the employer could be over-demanding. In other ways, Evatt was extremely generous, so he was a man of contradictions. The title of the chapter 'A good kick in the pants for the old guard' was what Evatt said when he saw a modern painting that led to a longstanding relationship with modern art and artists. This chapter also contains fascinating details about the case of *R v Wilson; Ex parte Kisch*.[13] Kisch was a Czechoslovakian writer whom the Liberal Government wished to prevent entering the country, including by means of the famous 'dictation test'. Although Kisch spoke some seven European languages, he did not speak Scots Gaelic. Evatt J sat alone when the case first came to the High Court. The initial approach of Kisch's lawyers was to argue about the constitutional status of the *Immigration Act*. Evatt, as judge, recommended an argument about whether the Government had complied with the Act. The ethical status of this intervention is doubtful, but the approach was taken up by Kisch's counsel, Albert Piddington KC (then aged 72), and Evatt J gave an order nisi with costs. Further developments led to the case going to the Full Court using the same line of argument and Kisch won — the dictation test had been improperly applied.

Chapter 6 canvasses the inner arguments of the High Court, sometimes petty, and the debates concerning who would be Chief Justice. The appointment of judges to the High Court, and the appointment of Chief Justice in particular, was a matter about which both sides of politics fought hard, as did those who wished for the office. The relationship of Evatt and McTiernan JJ with Starke J was contemptuous on both sides, with no contact at all. The relationship between Evatt J and Dixon J was quite different. They agreed that the death penalty should be abolished and Evatt clearly admired Dixon's rigour, even where he disagreed (slightly) with him. One of the cases they disagreed on was *Victoria Park Racing & Recreation Grounds Co Ltd v Taylor*.[14] Evatt argued presciently for a tort of privacy on the basis that television would come and there would be new law. Dixon took a hard line and said there was no right not to have people look over your fence. It is noteworthy that while Evatt was on the Court, he and Dixon wrote 18 joint judgments. This suggests that Dixon was in agreement with the judgments of Evatt and vice versa. Coper has suggested that Dixon's judgments were more nuanced than his account of legalism indicates:

---

12 *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89, 150–1 [134].
13 *R v Wilson; Ex parte Kisch* (1934) 52 CLR 234.
14 *Victoria Park Racing & Recreation Grounds Co Ltd v Taylor* (1937) 58 CLR 479.

'[i]n truth, Sir Owen's elegant, nuanced, complex and allusive essay boil[ed] down to a preference for change that is gradual and evolutionary rather than abrupt'.[15]

Evatt was invited to give the Macrossan Lecture in 1937. His topic was William Bligh and the lecture later became his famous book *Rum Rebellion.*[16] It was intended to right the historical wrongs meted out to Bligh and to rehabilitate his reputation. He noted that Bligh's reputation had mostly been created by partisans. Evatt wrote the book while at the High Court, taking no time out for this.

In 1938, Evatt took leave from the Court and travelled with Mary Alice to Europe and the United States. By this time, the Evatts had established themselves as connected with modern art, and there was a public stoush between Menzies criticising modern art and Evatt supporting it. Haigh notes: 'Maker of law, promoter of history, spokesman of arts: Australia had never known such a figure. The world had not seen too many either. It was about to.'[17] On their trip, Mary Alice, a painter, spent time in various ateliers, while Evatt wrote his biography of Holman[18] and they both attended galleries, and concerts, including four days of continuous jazz concerts in New York. Evatt lectured at Harvard University and Columbia University, and gave a tribute to Justice Cardozo soon after his death.[19] He wrote to President Roosevelt suggesting that Felix Frankfurter be appointed as Supreme Court Justice. As Haigh says, 'Who did Evatt think he was? ... Rare has been such cheek in the history of Australia's external affairs.'[20]

Chapter 8 of *The Brilliant Boy* brings us to *Chester*, the case that is central to the book. Haigh takes us through the precedential history of 'nervous shock' cases from 1767. Early views called this 'railway spine' because of a putative link between a jolt to the spine and mental illness, but the history of these cases also shows the changes in psychiatric thinking over time — such as the development of concepts of neurosis and 'shell shock' in World War I and post-traumatic stress disorder in the Vietnam War. The earliest Australian case, *Victorian Railways Commissioners v Coultas*,[21] concerned a pregnant woman who was caught at a railway crossing and only just managed to leave it before the train came through. She suffered a miscarriage and nervous shock. The Privy Council held that she could not recover for mental injury without physical injury. This remained the position in Australia for some time, while English, American and Canadian cases moved on.

In chapter 9, Haigh details the various stages of *Chester*. Evatt's brother, Clive, appeared for Golda/Janet. The evidence of the doctor treating Golda was that

> the scar will always be there to a more extent [sic] than in the ordinary case of the ordinary death of the child, owing to the fact of her having seen the

---

15 Josev (n 1) 101, quoting Michael Coper, 'Critique and Comment: Concern about Judicial Method' (2006) 30(2) *Melbourne University Law Review* 554, 561.

16 HV Evatt, *Rum Rebellion: A Study of the Overthrow of Governor Bligh by John Macarthur and the New South Wales Corps* (Angus & Robertson, 1938).

17 Haigh (n 4) 183.

18 HV Evatt, *Australian Labour Leader: The Story of WA Holman and the Labour Movement* (Angus and Robertson, 1940).

19 HV Evatt, 'Mr Justice Cardozo' (1939) 48(3) *Yale Law Journal* 375.

20 Ibid 191.

21 *Victorian Railways Commissioners v Coultas* (1888) 13 AC 222.

> body as the boy was taken from the water and … also the fact that this boy was a particularly brilliant boy … the hope of her family ...[22]

The requirements for nervous shock at the time included that the shock had been caused by the seeing of the event causing death and that it was the shock, rather than anxious waiting, that caused the psychiatric illness. The fact that Maxie's father said he thought he was alive when he came out of the water created doubt for Golda's claim. Evidence from a nine-year-old who said he saw Maxie go into the water and told his mother so, (but she told the nine-year old to go to the pictures, rather than investigate), also caused problems because it may have shown that Maxie was in the water at 2pm rather than 5pm, suggesting that Golda incurred suffering by waiting, rather than by seeing his death.

For the modern reader, the judgments of the majority of the High Court in *Chester* are shocking in their unwillingness to understand the mental injury suffered by Maxie's mother. Haigh points out that this is a generation who had lived through the World War I and a depression. The judges regarded death as an everyday thing that affected others only briefly. Latham CJ said:

> Death is not an infrequent event, and even violent and distressing deaths are not uncommon. It is however, not a common experience of mankind that the spectacle, even of the sudden and distressing death of a child, produces any consequence of more than a temporary nature in the case of bystanders or even of close relatives who see the body after death has taken place.[23]

Latham CJ, Starke and Rich JJ all found for the Council. The majority thought that the harm done to Golda was not foreseeable and outside normal human experience and therefore not compensable. When one considers whether this is a judgment of complete and strict legalism one is struck by the fact that they have such a negative (in the sense of absent) view of emotional reaction to death. But although this looks as if it is non-emotional, it is indeed an emotional and social argument, although Evatt J's dissent has been more often seen that way.

Evatt J's judgment began with a detailed statement of the facts. His Honour then considered the feelings of Golda while she looked for Maxie: 'During this crucial period [while Maxie was lost] the plaintiff's condition of mind and nerve can be completely understood only by parents who have been placed in a similar agony of hope and fear, with hope gradually decreasing.'[24] The judgment allows us to see Golda looking in an agony of fear and hope, which is ultimately dashed, and also into Evatt's emotional relationship with his own children — he is identifying with her. His Honour goes on to quote William Blake from the *Songs of Experience*.[25] The use of literature is striking and has real impact in the judgment, giving it an emotional depth that marks it out very strongly from the majority judgments. Evatt J then quoted Australian Joseph Furphy's (Tom Collins') book *Such is Life*,[26] which, as Haigh notes, is 'haunted by lost children'.[27] Haigh also points out that it is typical

---

22 Haigh (n 4) 235, quoting *Chester* (n 3) 18.
23 Haigh (n 4) 270, quoting *Chester* (n 3) 10.
24 Haigh (n 4) 275, quoting *Chester* (n 3) 17.
25 *Chester* (n 3) 17.
26 Ibid 18; Haigh (n 4) 234.
27 Haigh (n 4) 278.

of Evatt to put English literature and Australian literature on the same level, in a way that was not common at the time. Haigh gives a detailed account of the judgment, which critiques the trial judge's and Jordan CJ's treatment of the case. Evatt J pointed out that the range of human responses to an accident is wide, and that this is common knowledge, thus disposing of the foreseeability argument made by the lower courts. This argument is the legalistic argument, but the references to literature are extremely unusual in Australian law at the time, as is the clear acceptance of the validity of Golda's emotional reaction to her son's death.

Why is this case of such interest? One reason is the power of the language and arguments in it. Evatt J's judgment is strong, and consistently powerful. Another reason is that ultimately, as predicted by Goodhart in the *Law Quarterly Review*,[28] it prevailed in the form of the *Law Reform (Miscellaneous Provisions) Act 1944* (NSW), which made it easier to bring such cases. Abram Landa, discussing this Bill in Parliament as Member for Bondi, (and having been the instigator of the *Chester* case) said

> The people of Bondi had a special reason to appreciate the humanitarian attitude of the Government in providing for the type of case which was not provided for when Mrs Chester, in that famous case now known as the Chester case, had the misfortune to lose her son in the Waverley district.[29]

The Bill was passed, and subsequently followed by other Australian jurisdictions.

Josev argues that the language of 'judicial activism' did not reach Australia until the 1990s.[30] Evatt J's dissent might well have been argued to be activist if it had been delivered at that time, although as a dissent it would have been subject to less scrutiny. But Evatt J's dissent and its consequences show one of the other ways in which the law changes, while the doctrine of precedent remains. The intervention of Parliament to change the law because a dissent has become more persuasive than the majority is uncommon, but certainly happens. Evatt J's judgment in this case is not particularly political, although others of his judgments are.

IV Foreign and Internal Affairs

Evatt's role in the United Nations ('UN') (at the same time as he was Attorney-General and Minister for External Affairs) has not been prominent in Australian minds, but as the fourth President of the UN, he had a considerable role, including in protecting the International Children's Emergency Fund ('UNICEF') and working on the division of Palestine. His connection to Abram Landa, a Zionist, was strong. Haigh argues that Evatt was influenced by Julius Stone's arguments that the British restrictions on Jewish immigration to Palestine breached international law.[31] The UN voted to admit the new nation of Israel in 1949.

---

28 AL Goodhart, 'An Australian Shock Case' (1939) 55(4) *Law Quarterly Review* 495, 497.
29 Haigh (n 4) 319.
30 Josev (n 1) 85.
31 Haigh (n 4) 322.

In 1950–51, Evatt argued against the Menzies Government in the High Court, successfully defeating the Communist Party Dissolution Bill.[32] As leader of the Labor Party, he then successfully campaigned against the yes vote in the subsequent referendum. Evatt, despite being leader, was often at odds with the rest of the Party. He later retired from politics and in 1960 became Chief Justice of the Supreme Court of NSW. Arguments that he was mentally ill have been canvassed, but Haigh dismisses these as disproportionate and perhaps created by his communist sympathies in the Cold War.[33]

V A Flawed, Contradictory Genius…

Unsurprisingly, the Chesters did not have an easy life after the death of Maxie and the court case, which had become an ordeal in itself. Golda hanged herself 10 years after the decision. She is buried in Rookwood Cemetery in Sydney. The two older children had to live with the fact that they had not looked after Maxie, and Benny especially appeared to have felt very badly about this.

Evatt died at the age of 71 in 1965. He had become vaguer and somewhat confused towards the end of his life and lost his prodigious memory, having a severe stroke in the early 1960s, but his emotional connection to those who suffered remained. He was a doting grandfather who did far more than most grandfathers of the time, flying to Sydney from Canberra every couple of days when his granddaughter had to be left at Tresillian with stomach problems, and walking her in her pram.

Haigh has given us a picture of Evatt as a flawed, contradictory, loving, hating, resentful, arrogant, warm man of genius:

> Yet in the 1930s … no Australian leading the life of the mind was more brilliant, ambitious and ubiquitous. He argued unpopular causes. He brought breadth and warmth to a Bench crabbed and cold. He brought hope to those who yearned for an Australia of more than imperial loyalty, martial gestures, sporting heroism and hand-me-down culture, and walked confidently also in the world beyond.[34]

Writing about Evatt must be difficult. He had so many high points in his career, each of which would have been sufficient for another person's whole life — including being Member of both NSW and Commonwealth Parliaments, High Court justice, Attorney-General of the Commonwealth, Leader of the Labor Party, President of the UN, and Chief Justice of the NSW Supreme Court. Haigh's book emphasises the legal career, but it is not possible to talk about Evatt without mentioning politics because he was also such a political animal, and his interests were so wide-ranging. He was part of so many pivotal moments in Australian law and history, and is not as well known now as he should be. Perhaps this is a case of tall poppy syndrome, or perhaps it is that he was such a complex and contradictory character who cannot, as we are wont to do these days, be captured in a single pithy

---

32 *Australian Communist Party v Commonwealth* (1951) 83 CLR 1.
33 Haigh (n 4) 340.
34 Ibid 341.

phrase. One thing that is striking about Evatt for me is that no-one can doubt his commitment to justice, even if views of justice may differ. This shows in everything he did. Indeed, he said in his last speech of the referendum campaign against the dissolution of the Communist Party: 'Justice is the thing. To the best of my ability, I've stood for it.'[35]

What we see in Evatt's career is not only an intellectual giant, but also the futility of arguing that the law can exist independently of politics or political judgment or indeed the views and biases of the judiciary. The *Chester* case is a good example of this — with the majority's bias against 'emotionalism' and Evatt's bias towards recognition of the reality of emotion. The declaratory theory of law has been thoroughly discredited now, but Sir Anthony Mason describes it as legal formalism:

> Legal formalism provides a mantle of legitimacy for the non-elected judiciary in a democratic society. If the principles of law are deducible from past precedents, there is no place for the personal predilections and values of the individual judge … What the law should be is a matter not for courts but for Parliament … In its most extreme form legalism required a complete separation of law from politics and policy … partly on the ground that exposure to politics and policy would subject the law to controversy.[36]

Realism discredited legal formalism because, as Julius Stone showed,[37] legal formalism did not answer the question 'how do judges decide which cases are alike?'. Sir Owen Dixon's references to legalism drew on the political benefits of formalism, but as both his and Evatt J's judgments show, there was far more nuance in their work, and a realist interpretation of those judgments has much to offer. It is beyond the scope of this essay to go further into theories of the doctrine of precedent, but at one level Haigh's book might be seen as an exemplar of a realist investigation of a judge's work.

For tort lawyers, this book is a must-read. For Australians generally, it is also a must-read, and they need not be afraid that the reading is dull. It is a rollicking read, with Haigh's genius for story-telling demonstrating all the fascinating and paradoxical elements of Evatt's personality and achievements. Haigh has evoked not just Evatt, but also the turbulent Australia that Evatt lived in and greatly contributed to. This is a gem of Australian history.

---

35 Ibid 338.

36 Sir Anthony Mason, 'Future Directions in Australian Law' (1987) 13(3) *Monash University Law Review* 149, 156.

37 Julius Stone, 'The Ratio of the Ratio Decidendi' (1959) 22(6) *Modern Law Review* 597.