Commonwealthmen and Republicans: Dr. H.V.
Evatt, the Monarchy and India

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H.V. Evatt's foreign policy has attracted considerable historical attention, but his response as Australian External Affairs Minister to Commonwealth constitutional issues remains neglected. Evatt sought to retain India in the Commonwealth in 1948-49, but he insisted that India ought to recognise the king's prerogatives in its constitutional arrangements. He had developed his defence of the monarchy and its place in the empire in his writings of the inter-war years, and sought to apply these ideas in his Commonwealth diplomacy of the late 1940s. Evatt's failure to have these ideas accepted resulted from his attempt to impose an ideal of the relationship between the monarchy and the Commonwealth, derived from his understanding of the evolution of constitutional relations between the United Kingdom and the old dominions, to the very different context of Asian postwar decolonisation.

Sovereigns die and Sovereignties: how all dies, and is for a Time only; is a ‘Time-Phantasm, yet reckons itself real’!

Observe ... that of man’s whole terrestrial possessions and attainments, unspeakably the noblest are his Symbols, divine or divine-seeming; under which he marches and fights, with victorious assurance, in this life-battle: what we can call his Realised Ideals. Of which Realised Ideals, omitting the rest, consider only these two: his Church, or spiritual Guidance; his Kingship, or temporal one.

Thomas Carlyle, *The French Revolution: A History*

Herbert Vere Evatt (1894-1965) remains one of the most controversial and much discussed figures in Australian political history, having attracted a book-length memoir, three biographies and numerous articles, monographs and memoirs devoted to one or another aspect of his life and work. Evatt rose to the heights of

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the legal profession as a barrister, High Court Judge and in the twilight of his career, Chief Justice of New South Wales. He was a brilliant scholar, the author of theses and books on constitutional law and British and Australian history. In the 1920s he had a stormy career in New South Wales State politics, first in the Labor Party and then as an opponent of the autocratic Labor leader J.T. Lang; and he was in the 1940s a Federal Labor politician, Attorney-General, External Affairs Minister, Deputy Prime Minister and from 1951 until 1960, leader of the Federal Parliamentary Labor Party. Evatt is remembered outside Australia mainly as an influential figure in the early history of the United Nations and President of the General Assembly in 1948-49.

Evatt’s role in international affairs has perhaps attracted more notice than any other aspect of his career. Most historians accept that the 1940s were a crucial period in the history of Australian foreign policy, but there is no consensus on how effective Evatt was as Australia’s External Affairs Minister, a position he held for most of the decade. Moreover, in the area of Commonwealth affairs, while Evatt’s attitudes to issues such as defence and the peace settlements have received much attention, his involvement in negotiations over constitutional relationships has not. This is a peculiar omission from the historiography because the question of India’s relationship to the Commonwealth was a significant problem for Commonwealth statesmen in the late 1940s. Evatt’s expertise as a constitutional lawyer, as well as his apparently cordial relations with Nehru, should have placed him in a strong position to assume a leading role in the negotiations; and some historians have indeed claimed that he played such a role.

The aim of this article is to examine Evatt’s Commonwealth diplomacy in the context of his political thought and writings as a constitutional lawyer. Evatt’s lack of success in bringing his constitutional expertise to bear on this post-war Commonwealth constitutional problem, surely one of his best opportunities of influencing international events in this period, raises larger questions about the style and substance of his diplomacy. Evatt’s legal and historical writings, some of which I shall examine in the first part of this article, help to contextualise both Evatt’s place in Australian intellectual history and aspects of his behaviour as External Affairs Minister in the 1940s. In the second part of the article, I shall

5 See Tennant, Evatt, pp. 199 and 239; Buckley, Dale and Reynolds, Doc Evatt, p. 296.
6 Crockett has discussed the relationship between Evatt’s attitudes to the law and his diplomacy in Evatt, pp. 202, 210 and 225.
discuss the main features of Evatt’s response to India’s determination to remain within the Commonwealth while severing its links with the monarchy. In the latter case, ideas that Evatt developed in his writings of the inter-war years were applied to new, and arguably inappropriate, political contexts.

Some historians have been hostile to the suggestion that Evatt’s political ideas ought to be taken seriously. Paul Hasluck, an adviser to Evatt in the 1940s, commented:

[...] in a rather vague way he regarded himself as a liberal. His contributions to Australian history reveal a readiness to take sides against those in authority and for those who suffered under authority ... This was not a philosophical conclusion (for he himself was authoritarian so long as he could be in authority) but rather was an emotional state. His sympathies and resentments were not the expression of a creed so much as the impulses bred from his own experience and his own nature."

I shall challenge Hasluck’s conclusion in this article. It is no doubt correct that Evatt’s personality (or one might add, the personality of any political actor) must be central to an understanding of his political thought; but Evatt, perhaps more than most Australian political leaders, was conscious of the importance of ideas and symbols in political life. This article, as a consequence, is as much an exercise in cultural and intellectual history as in the history of Australian foreign policy, an exploration of the relationship between law, political theory and diplomacy. It is far from comprehensive in its treatment of a complex issue — Australia’s response to the emergence of a “New Commonwealth” in the late 1940s — and instead focuses on those aspects that reveal key dimensions of Evatt’s attitudes to the British Commonwealth and the monarchy.9

The idea of taking the monarchy seriously in a discussion of Australian foreign policy in the mid-twentieth century might seem perverse. Surely, by this time, the Australian state had achieved full control over foreign policy, and the monarchy was irrelevant to Australia’s behaviour in international affairs. Yet, like the fate of Robert Darnton’s unfortunate cats, this very point should arouse an historian’s curiosity: why were the Australians so resistant to the idea of India remaining in the Commonwealth as a republic with no link to the monarchy?10 Evatt, as we shall see, to the bitter end remained opposed to the idea of allowing India to remain in the Commonwealth as a full member without the retention of some of the king’s prerogatives.

At one level, political leaders were obviously concerned about an electoral backlash. Australian Labor governments were always more vulnerable to the charge of “disloyalty” than their opponents, who frequently criticised Labor in the

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7 Hasluck, Diplomatic Witness, p. 41.
8 See Crockett, Evatt.
9 A more detailed treatment of India’s decision to remain in the Commonwealth is available in Michael Brecher, “India’s Decision to Remain in the Commonwealth”. The Journal of Commonwealth and Comparative Politics, XII (1) (March 1974), pp. 62-90 and Moore, Making.
10 For a discussion and demonstration of the methods of ethnographic history, see Robert Darnton, The Great Cat Massacre and Other Episodes in French Cultural History (London: Allen Lane, 1984), especially pp. 4-5 and the essay in the same volume “Workers Revolt: The Great Cat Massacre of the Rue Saint-Severin”, pp. 75-104.
1940s for having undermined the empire and disturbed Australia’s place in it through a misguided stress on the United Nations and a preoccupation with enhancing Australia’s international status. Yet the Australian Labor government, and Evatt as its External Affairs Minister, were also concerned with the symbolic dimensions of political authority to an extent that has largely gone unrecognised by historians. Sean Scalmer, however, has recently argued that Labor leaders of the 1940s should be treated “as intellectuals — symbol-manipulators attempting to manoeuvre within constraining institutions while also attracting and shaping the working class”. In particular, their claim that the Labor Party was “practical” should be regarded not as evidence of “incorporation”, but as part of a counter-hegemonic strategy.  

In the early 1920s a language of monarchy, empire and Commonwealth, derived from the common law, provided Evatt with a resource on which he drew to argue that Australia had achieved dominion status. He later deployed this language (and, in the process, contributed to the gradual transformation of it) in the public sphere to defend a more independent role for Australia in world affairs. His main opponent, R.G. Menzies, drew on a strikingly similar language — with its stress on the idea of the British Empire/Commonwealth as a “family” under a single “father” (the king) — but instead used it to stress the importance of empire unity. This is an illustration of the diverse ways in which such narratives can be deployed in political struggles.

Once we take the symbolic order seriously in a consideration of Commonwealth relations, the reasons for Labor’s attachment to the monarchy become clearer. It registered the Labor Party leadership’s willingness to bow to a powerful commonsense concerning the origins of political authority in “British” nations such as Australia, and at the same time expressed the idea that Australia was involved in a family relationship with other “British” nations, especially the United Kingdom (UK), through the British Commonwealth. This commonsense was challenged in the international arena in the post-war years, a crucial period in the emergence of modern Australian political identity.

Liberalism, republicanism and the law

In a recent study, Peter Beilharz has argued that Evatt exemplified new liberalism in its “legal or constitutional mode”. According to Beilharz, new liberalism in Australia took “two quite distinct though related turns” in the twentieth century.

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One was orientated towards community and education of the masses for citizenship in a democracy — we might perhaps think of it as having some affinities with civic humanism — while the other leaned towards “constitutionalism and nation-building”. Beilharz argues that while both tendencies influenced Evatt, his thought came to be dominated by this latter “legal” or “constitutional” strand, a view that I accept here. Evatt’s liberal thinking, in its emphasis on the role of law in shaping human relationships, helps to explain his approach to Commonwealth constitutional relations in the late 1940s. On the other hand, I shall also suggest that there were some recognisable civic humanist elements in Evatt’s political thought that have a bearing on his attitude to the monarchy and the British Commonwealth.

Evatt was very much a product of the University of Sydney and its traditions of cultural liberalism and idealist philosophy. As Gregory Melleuish has shown, this strand of liberalism rested on a brew of rationalism, spiritualised humanism and liberal ideals of citizenship. In his University of Sydney prize-winning essay *Liberalism in Australia* (1918), Evatt provided an account of Australian history as a story of the decline of arbitrary power and the rise of responsible institutions. The ideal of self-government underpins Evatt’s narrative, as it did his foreign policy a few years later. Evatt endorsed the “Whig theory ... that ‘Kings exist for the people’”. In Australia, liberalism triumphed “over the evils of irresponsible government”, which was inclined to be arbitrary and capricious. It is true that many of those who protested against the tyranny of the early governors were motivated largely by greed, but this does not detract from the significance of the achievement, for

[i]n the history of empires it is seen that many a colony of a parent state values among its prized traditions some opposition to what is considered interference on the part of the Imperial Government. It is so in the case of Australia in regard to the [convict] transportation system, and to the rule of arbitrary governors.

Like a host of other Australian liberals, Evatt wanted to retain “the monarchical connection as the symbolic embodiment of the people’s legitimacy to govern” and the protector of a British antipodean culture that would also incorporate aspects of the United States of America’s reworking of that culture suitable to Australian conditions. Indeed, Evatt regarded the monarchy as a source of beneficence, an

20 Ibid., p. 11.
instrument of good governance in a free society. In his discussion of land policy, he defended the “fiction” that “the Crown has an absolute right to control the disposition of unoccupied land”, for “without some application of the maxim, it would have been impossible for the colonies to have expanded at all”. This “fiction” thus helped to legitimise the enterprise of colonial settlement. (Like most of his contemporaries, he side-stepped the problems posed by the legal fiction of *terra nullius*, which ignored the traditional owners of the land. Every legal fiction has its losers.)

This discussion has taken us some distance from Commonwealth relations, but Evatt also developed the idea of a beneficent monarchy in his later writings on constitutional law, in which the Crown was the ultimate source of Australian self-government. In his 1924 doctoral thesis on the Royal Prerogative, Evatt defended the “monarchical element” as “still a most important and valuable feature of the Constitution of the Dominions”. Indeed, he went as far as to declare that while the Empire remained in existence and “the King’s authority extends throughout it, no act of a Dominion Legislature ... can remove the Crown from its position as a constituent element in legislation”. This did not mean, however, that the Empire rested on a rigid legal foundation, for the Prerogative was “a living system of law in questions relating to the self-governing Dominions”. In other words, when Courts throughout the empire sought to apply the rules of the Prerogative, they “can have regard and do have regard to the accepted principles under which British communities are governed”, the most significant of these being “self-government”.

Evatt considered the unity of the Crown as the “instrument which enables certain at least of the King’s Prerogatives to be exercised with respect to the self-governing Dominions of the Empire. The Crown is a unity in that sense in order to enable those Prerogatives to exist”. Yet, paradoxically, there had in recent years been recognition of “the severability of the differing aspects of the Crown”. So while “the unity of the Crown” was “the basis of the constitutional relations between the United Kingdom and the self-governing Dominions, that unity is distinctly qualified by a divisibility into varying agents and varying localities”. Here was a similar phenomenon to that Evatt had identified in relation to the land: the power of the Crown, once divested of any capacity for oppression or tyranny,
became the foundation for self-government, which was synonymous with national freedom and independence.\textsuperscript{31} Separation from Britain did not enter the picture.

Evatt believed that the “delegation” of power from the Crown to self-governing colonies had occurred “gradually”; it “developed within the growth of and the recognition of the growth of Dominion self-government”.\textsuperscript{32} The Prerogative was “a living organism capable of meeting the requirements of a growing community”.\textsuperscript{33} The metaphor of “growth” to maturity that Evatt employs, as well as his stress on the attainment of self-government as the goal of communities, reminds us of his place in the tradition of Australian liberal constitutionalism. Whatever the legal importance of the Prerogative, it was a concept admirably suited to the political imagination of an Australian liberal of the inter-war years, concerned about how institutions could be adapted to new political realities and the task of nation-building within the framework of the common law. It is also significant for Evatt’s attitude to the monarchy that this process of organic growth required a continuing connection between the Crown and the dominions. Only then could the Courts, interpreting the common law, “find in the Prerogative of the King an instrument which can and should assimilate legal to political facts”.\textsuperscript{34}

Evatt was responding to developments in Commonwealth relations since the Great War which, he believed, had enhanced the status of the dominions. He assumed that dominion self-government was now complete throughout the empire. (This was two years before the Balfour Report, which registered the development of greater self-government in the dominions, or at least in Canada and South Africa.) His stress on empire is important, for at no stage in his thesis did Evatt present self-government as a step towards separation from the empire for any self-governing dominion.\textsuperscript{35} This point is clear in a passage from his thesis, remarkable for its utopianism in an otherwise technical document. It does much to explain Evatt’s later understandings of the role of the Commonwealth:

\ldots all Prerogatives may by virtue of the principle of self-government, a principle based on the highest legal authority, be exercised by Dominion Executives. This view is \ldots in harmony with the whole history, and particularly with the recent developments of the Constitution of the British Commonwealth of Nations. Difficulties may arise under it, but they are not insuperable, and the exercise of mutual co-operation will get rid of them all. There is nothing in this view involving the disruption of the Empire \ldots On the contrary, it preserves the fundamental unity of the Empire through the personality of the King. He remains King of the new Commonwealth of Nations, his Prerogative powers lend powerful aid to the general principle of self-government, his name is the

\textsuperscript{31} Menzies rejected the idea of the divisibility of the Crown, which in his view reduced the empire to “a friendly group of nations”. Commonwealth members were not even necessarily allies, because they were not bound to support each other in wartime. If divisibility were accepted, then “the King may make war as King of the United Kingdom, and remain at peace as King of Australia”. Menzies regarded this idea as untenable. See Commonwealth Parliamentary Debates, 172 (7) (October 1942), pp. 1436-7. Like Evatt, Menzies deployed language and symbols that expressed a particular understanding of Australia’s relationship with the monarchy and the British Commonwealth. For a study of Menzies’ use of political language, see Judith Brett, Robert Menzies’ Forgotten People (Sydney: Macmillan, 1992).
\textsuperscript{32} Evatt, The Royal Prerogative, p. 109.
\textsuperscript{33} Ibid., p. 141.
\textsuperscript{34} Ibid., p. 84.
\textsuperscript{35} Ibid., p. 68.
symbol of unity, not a unity resting on legal supremacy, but rather resting in the hearts and minds of British citizens throughout the world. 36

Evatt’s reference to “the personality of the King” is significant; he resists the term “Crown” because its divisibility, recognised elsewhere in his thesis, must militate against its capacity to act as the sole source of Empire unity in the 1920s and beyond. This unity must also be provided by common kinship, as expressed in common allegiance to the king. Evatt expressed the idea during the 1942 parliamentary debate on the Statute of Westminster, which he had the task of steering through parliament: “Our tie with Britain is still ... the silken tie of kinship, plus the legal tie that endures forever, namely, allegiance to His Majesty the King and the unity of the Crown throughout the Empire”.37

In an otherwise perceptive study of Evatt’s legal writings, Peter Crockett has somewhat curiously claimed that Evatt “nursed republican aspirations”, that he desired

... an Australian Constitution devoid of any monarchical basis ... not unlike the American Constitution. Because of his concern for the legal supremacy of the Crown over Australia, and his frustration at the inability of reformers to obtain popular or state approval for the amendment of the Constitution, he had long aspired to the formation of an Australian republic.38

This is a peculiar claim, apparently based on a reading of Evatt’s The King and his Dominion Governors: A Study of the Reserve Powers of the Crown in Great Britain and the Dominions (1936). Crockett, however, provides no evidence in support of his assertion and there is nothing in either Evatt’s doctoral thesis or the later study to suggest that he believed Australia ought to sever its links with the Crown. Evatt certainly did not advocate anti-monarchical republicanism in his major legal writings, and his later diplomacy on the question of a republican India’s relationship to the Commonwealth provides a clear indication of Evatt’s positive attitude to the benefits of dominion status.

Crockett assumes that Evatt’s argument in The King and His Dominion Governors — “that the reserve powers of the Crown should be subjected to the normal and natural process of analysis and definition and reduction to rules of positive law” and that “interpretation and maintenance of those rules would then normally become the function of some competent tribunal, judicial or arbitral”39 — amounted to an argument against the legal supremacy of the Crown in Australia: “In effect he wanted the Crown’s supremacy to be divested and passed to an Australian tribunal that was empowered and directed by local legislation”.40 Yet the manner in which Evatt expressed his argument either suggests otherwise, or else was a cunning attempt to hide a radical republican fist in a velvet glove of constitutional monarchy. Such deliberate deception seems unlikely, although self-deception is possible. Evatt claimed that it was “in the interest both of the

36 Evatt, The Royal Prerogative, pp. 197-8. See also Crockett, Evatt, p. 177.
37 Commonwealth Parliamentary Debates, 1 October 1942, volume 172, p. 1337.
38 Crockett, Evatt, pp. 184 and 181.
40 Crockett, Evatt, p.180.
Monarch and of his people” that definite rules should govern the “relationship between the Crown and its Ministers” that would “make it impossible to impute the slightest unfairness or favouritism to the exercise of any legal prerogative”.41 With the spread of the franchise and the rise of the Labor Party, this task had become urgent, as there was now more likely to be damaging conflict. Who could blame the Labor Party when, finding itself the victim of the exercise of the reserve power more often than its opponents, it cried foul?42 Evatt, with fresh memories of the dismissal of Lang by the Governor of New South Wales in 1932 amidst the turmoil of the depression, warned that

Uncertainty, and even tyranny, may be the direct result of continuing in legal force an undefined discretionary authority ... The result of not defining, and so confining, such conventions and maxims may easily be to transfer political contests into something like civil war; so anarchy may breed anarchy.43

Like other intellectuals who identified with the new liberalism, Evatt was concerned with justice and social order. He did not argue that the monarchy should be removed from the constitution. As he commented of the British constitutional crisis of 1909-11: “It is not impossible that the right of personal intervention by the Monarch should be preserved but its proper scope and ambit carefully defined and restricted so that all concerned may attend and govern themselves accordingly”.44 Evatt was worried about the possibility of the exercise of the reserve power in a manner derogatory to the principle of self-government, which would invariably create political turmoil and damage the Crown, “as the Crown and its representatives cannot avoid being embroiled from time to time in the controversies created by a political crisis, the tendency to weaken the Crown as an institution is almost inevitable”.45

Evatt’s ideas, as expressed in his 1936 study, appear to belong to an understanding of civil liberty that Quentin Skinner has called neo-Roman, a political theory that flourished in the seventeenth and eighteenth centuries in Great Britain.46 According to Skinner, whereas in liberalism it is “force or the coercive threat of it” that are “the only forms of constraint that interfere with individual liberty”, in neo-Roman thought, living in dependence on another “is in itself a source and a form of constraint” that is the road to slavery. One way in which servitude can occur is “when the internal constitution of a state allows for the exercise of any discretionary or prerogative powers on the part of those governing it”. The very existence of such a prerogative is “destructive of public liberty”. Yet while some of the writers Skinner examines rejected all forms of monarchical

41 Evatt, The King, p. 11.
42 Ibid., pp. 277-81.
43 Ibid., p. 277.
44 Ibid., p. 89.
government as inconsistent with liberty because they caused dependence, others accepted the need for a monarch, so long as the “head” is “subject to whatever laws are agreed and enacted by the body as a whole”.47 This is precisely the argument Evatt presents in *The King and His Dominion Governors* and reveals the manner in which his liberalism incorporated civic humanist ideas. Only in this sense can Evatt’s argument be considered “republican”; not in the sense suggested by Crockett, for Evatt’s argument was not radically anti-monarchical. It envisaged an adaptation of the monarchy to the egalitarian realities of democratic life in Australia and other dominions.

In the 1940s Evatt, J.B. Chifley, his Prime Minister, and other Labor ministers continued to regard the monarchy as “a handy constitutional fiction”, a phrase that Chifley used in explaining his views to the Irish Minister in Australia.48 On another occasion, the Irish representative reported to his government that the Labor parliamentarians “have no natural or spontaneous affection for the Crown but regard it as an important unifying force and altogether essential for Australia”49. How do we explain these attitudes? Evatt’s inter-war writings provide an important sense of the continuity between Labor assumptions of the 1940s and earlier radical-liberal thinking about monarchy and Commonwealth, but there were also more immediate reasons for Labor’s emphasis on kingship. First, the monarchy both expressed and reinforced Australia’s identity as a British nation, a notion the government wanted to promote, particularly at home, after the often troubled relations with the UK government in the war years. Both Chifley and Evatt envisaged an important role for the British Commonwealth in the post-war world and even while the government wished to emphasise that Australia, as an independent nation, had a role to play in world affairs, they also saw her future as tied to the UK. Evatt, in particular, “foresaw a gradual devolution of power to the Dominions, which would continue to be linked within a British Commonwealth”.50 His preference was for “a regionalised Commonwealth.”51 Australia, which in Evatt’s view was the most important Commonwealth nation in the Pacific, would thus act as an agent for the Commonwealth in that region. This would help the UK, whose capacity to rule as an imperial power had been seriously weakened by the war, while Australia’s relationship with Great Britain through the Commonwealth would yield important benefits in the fields of defence, the peace settlements, immigration, trade and finance.52 This attitude to Australia’s place in the Commonwealth was a response by Evatt to the decline of

48 Kiernan to Boland, 25 October 1948, Department of External Affairs, Ireland, Canberra D/1/11, National Archives of Ireland (NAI).
49 Kiernan, Minute, 8 March 1949, Department of External Affairs, Ireland, Canberra D/6, NAI.

British imperial power, decreasing United States interest in the south-west Pacific from 1947 and the dilemmas of Australia as a small power, feeling vulnerable in a region that seemed increasingly unstable in the post-war years.53

There is a further reason why the defence of the monarchy might appeal to a Labor government. Patricia Springborg has argued that the tradition of the monarch as a source of beneficence and welfare helps to explain why the modern welfare state “established itself in the seats of the ancient monarchies of Europe, some of which still manage to retain their Crowns”.54 While her argument is somewhat underdeveloped, we have seen this idea of the beneficent monarch at work in Evatt’s earlier writings and it is not difficult to see why in Australia, with its strong traditions of centralised government and state-sponsored developmentalism, this idea should have had some influence. As Alan Atkinson has suggested, it might have been of particular interest to a government that was, to a large extent, laying the foundations of the modern Australian welfare state. In 1946 Labor had even achieved that rarest of rarities in Australia, a constitutional change via a national referendum, which gave the government the power to legislate for social security. An identification with the monarchy might help Labor to present itself as a government upholding the common good and advancing social justice rather than legislating for any particular section or class. Thus, for a variety of reasons, the Labor government of the second half of the 1940s, and Evatt in particular, remained concerned that its power should be clothed in the authority of the monarchy. Evatt retained a concern with the abstractions of power.

**Evatt, India and the Commonwealth, 1948-9**

The negotiations over India’s future relationship to the British Commonwealth did not raise the question of the place of the monarchy in the Australian constitution, but they did provide an occasion on which Australian ministers and particularly Evatt, reflected on their understandings of the symbolism of kingship.55 In particular, they had to confront the question of the relationship of the monarchy to the British Commonwealth. For all the importance he attached to the British Commonwealth as a force for international peace and security, Evatt was never prepared to enlarge it at any price. He had hopes of an inclusive Commonwealth, but lacked any clear ideas about how this objective could be achieved in a post-war context. Newly independent India, in particular, seemed unlikely to be

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satisfied with dominion status; if it opted for a republican constitution, could it remain in the Commonwealth?

Evatt and the Australian High Commissioner to the UK, Jack Beasley, met with representatives of the British, Canadian and New Zealand governments in November 1948 to discuss the “Ten Points”, a scheme for future Indian membership of the Commonwealth that emerged from discussions between Jawahararl Nehru, Lord Mountbatten and Sir Stafford Cripps in October. As Robin Moore has remarked, Nehru’s Ten Points were based on the concept of “dormant sovereignty”: under India’s new constitution the king would not exercise sovereignty, but neither would his sovereignty be totally extinguished. Evatt, however, refused to regard the proposals as a satisfactory basis for Indian membership. He felt that except for the idea of a link through Commonwealth citizenship, they had little substance, and urged those present to persuade Nehru to accept a solution in which the king, in formal terms, would act for India (on the advice of his Indian Ministers) in external relations. This would amount to a recognition of the continuation of some of king’s prerogatives in an independent India. The echoes here of Evatt’s scholarly writing on the Royal Prerogative in the 1920s are clear. For Evatt, the prerogative provided kingship with its substance at the dominion level, and in the larger setting of the British Commonwealth. Far from being an empty symbol, the monarchy legitimised dominion autonomy through the common law. The monarchy, for Evatt, was not a symbol like a flag; it was the ultimate source of national power, and the most significant link between the members of the British Commonwealth.

In the discussions over Commonwealth constitutional relationships, Evatt’s preoccupation with the monarchy seems to have overshadowed any other concern, perhaps even a danger to Australia’s immigration policy. James Eayrs has argued that an important reason why the Canadians were attached to allegiance to the Crown as a badge of Commonwealth membership was because they were worried that a link based on the notion of Commonwealth citizenship — whatever that vague concept meant — would be used by a future Indian government as a means of influencing their immigration policy in favour of Indians. The Australian attachment to the Crown link cannot be explained in this way. On the contrary, Evatt appears not to have recognised any danger in the concept of Commonwealth

56 The UK delegation comprised Jowitt, the Lord Chancellor; P.J. Noel-Baker, the Secretary of State for Commonwealth Relations; Sir Norman Brook, the Secretary to the Cabinet; Sir Gilbert Laithwaite and F.E. Cumming-Bruce, both of the Commonwealth Relations Office; and Stephen Holmes of the Board of Trade. The Prime Minister of New Zealand, Peter Fraser, and the Canadian Secretary of State for External Affairs, Lester Pearson, were the principal representatives of their respective countries.


58 Gordon Walker to Attlee, 31 December 1948, PREM 8/1008, Public Record Office, Kew (PRO). See also Brook to Attlee, 15 December 1948, PREM 8/1008, PRO.

59 “Note of a Discussion at the Hotel Vendôme, Paris at 10a.m. 17th November 1948”; “Note of Discussion in Dr. Evatt’s Room, Palais de Chaillot, Paris, at 6p.m. on Wednesday 17th November 1948”, PREM 8/1008, PRO. See also Moore, Making, pp. 148-50.


citizenship, possibly because he was so preoccupied with the prerogatives of the monarchy. Alternatively, when we consider that Australia’s immigration policy had recently received adverse publicity, he might have thought it better to leave the matter alone; or perhaps he somewhat naively took it for granted that Australia’s immigration policy was its own business and had nothing to do with Commonwealth relations. 

Evatt, however, had been slow in other contexts to perceive dangers to Australia’s immigration policy. Chifley and John Burton, the Secretary of the Department of External Affairs, later signalled Australia’s opposition to a link based on Commonwealth citizenship.

Despite the efforts of the Commonwealth representatives, Nehru refused to countenance any concept of “delegation.” This response led some political leaders in the UK and the old dominions, including Clement Attlee and Evatt, to fall back on the concept of “association” — or a two-tier Commonwealth. Common wealth members who could not accept the Crown link would be in an outer ring. At the end of 1948, however, Evatt’s influence on proceedings declined dramatically. Since July 1948, when Chifley visited the UK for bilateral talks mainly on financial matters, British policy-makers had been preparing the Australian Prime Minister for the possibility that compromises might be necessary to retain the new dominions and thus maintain the strength of the Commonwealth in international affairs. In August 1948 the Secretary to the (UK) Cabinet, Sir Norman Brook, visited Canada, Australia and New Zealand to discuss the question with the dominion prime ministers. Brook found general agreement among the prime ministers that while a republican India would be acceptable in the Commonwealth, India would need to accept the “King’s jurisdiction in respect of her external relations.” As we have seen, this was also Evatt’s position. However, by January 1949, on the British side there was an acceptance that “no sufficient constitutional link with the Crown will be acceptable to India and that, therefore, we must face the question whether a Sovereign Democratic Republic, not owing allegiance to the Crown, can remain within the Commonwealth.” Evatt, on the other hand, when he arrived in Perth that month, announced that “the King is the head and pivot of the British Commonwealth of Nations. The King’s

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63 Cable 161, UKHCCA to CRO, 16 March 1949, DO 35/2206, PRO; Turnbull to Liesching, 23 April 1949, DO 35/2209.
65 “India: Note of a Discussion held at 10 Downing Street on Wednesday, 15th December, 1948, at 9.30p.m.,” PREM 8/1008, PRO; Cablegram 4469, Evatt to Chifley, 17 December 1948, National Archives of Australia (NAA): A1838, 851/4/1/3.
66 Brook to Atlee, 9 July 1948, CAB 21/1818, PRO.
67 Brook, CR 48(5) 14 September 1948, Cabinet, Committee on Commonwealth Relations, Commonwealth Relationship: Consultations with Canada, Australia and New Zealand, Report by the Secretary of the Cabinet, CAB 134/118, PRO. See also Moore, Making, pp. 114-16.
68 Cable 663, Commonwealth Relations Office (CRO) to UK High Commissioner in India (UKHCI), 25 February 1949, DO 35/2248, PRO.
powers are the continuing guarantee of the freedom and unity of the Commonwealth”. If Evatt determined Australian policy on this matter, there was a possibility of trouble, for he had shown little willingness to compromise. British ministers decided that a Prime Ministers’ Conference should be held in London to resolve the problem, and sent emissaries to the Commonwealth capitals to discuss the Indian issue in advance of the conference. On 27 February, in response to a message from Attlee, Chifley told the UK High Commissioner in Australia that “for political and strategic reasons” it was important to keep India in the Commonwealth. The emissary, Lord Listowel, soon arrived in Australia, and Chifley assured him of Australia’s desire to keep India in the Commonwealth, as a republic owing no allegiance to the king if necessary. The pragmatic Chifley thought India might be useful as a bulwark against communism in Asia; he also hoped that India’s Commonwealth membership might help to promote trade between Australia and India. Provided Australia’s relationship with the monarchy was not affected, an Indian republic should be accommodated in the Commonwealth. Cabinet endorsed his approach.

Evatt did not initially know of Chifley’s commitments. On 7 March, back in London, and fresh from a visit to New Delhi where he saw Nehru, Evatt spoke with Philip Noel-Baker, the Secretary of State for Commonwealth Relations, and Patrick Gordon Walker, Noel-Baker’s Parliamentary Under-Secretary. According to Evatt, there was “no real reason of substance why India should not continue as a member, with the full Crown link, on virtually the same footing as other members”. India should be asked to drop the word “republic” and replace it with “Union”, but Evatt regarded this as an ambit claim. He also advised that India should be pressed “strongly to accept some exercise of the prerogative powers of The King in External Affairs under delegation”. Evatt defined his attitude to the Commonwealth publicly a few days later when an article by him appeared in The Times. The British Commonwealth, Evatt asserted, was not based on “mere community of interest”, for “the elements of kingship, kinship, and practical comradeship are all of supreme significance”. The point Evatt regarded as crucial remained some recognition of the king’s prerogatives in an independent India, and British policy-makers watched carefully for reactions to his intervention around the Commonwealth. Nehru was not encouraging when he replied that

‘kinship and kingship’ could have no meaning for India, nor did he like the idea of calling the Commonwealth ‘British’. It was true that in an historical sense it was British but the tendency to

69  The Times, 14 January 1949.
70  Cable 121, UK High Commissioner in Commonwealth of Australia (UKHCCA) to CRO, 27 February 1949, DO 35/2205, PRO.
71  Cable 154, UKHCCA to CRO, 15 March 1949, DO 35/2206, PRO; Cable 161, UKHCCA to CRO, 16 March 1949, DO 35/2206, PRO. See also Moore, Making, pp. 174-8.
72  Cable 176, UKHCCA to CRO, 19 March 1949, DO 35/2206, PRO.
74  The Times, 12 March 1949.

speak of ‘the Commonwealth’ had helped to persuade Indians that something really new was coming into being.\textsuperscript{75}

With his colleague Sardar Patel, the Indian prime minister was less restrained: Evatt’s approach was “simple and childlike”.\textsuperscript{76}

The London Prime Ministers’ Conference, after some occasionally acrimonious discussion, settled on a Declaration that allowed India to remain in the Commonwealth as a republic; it also included acceptance of the king as Head of the Commonwealth.\textsuperscript{77} The efforts of Chifley to have an Australian draft accepted which emphasised that an exception was being made in the case of India, and that the constitutional arrangements of other members remained unchanged, was unsuccessful. To the end, however, Evatt was hostile to the idea of allowing India into the Commonwealth without some recognition of the authority of the king’s prerogatives in its constitutional arrangements; he advised Chifley via a cable from New York how to respond to Nehru, advice that Chifley wisely ignored.\textsuperscript{78}

The inability of Evatt to play a significant role in the remodelling of Commonwealth constitutional arrangements after the war lay in his attachment to an ideal of the relationship between the monarchy and the Commonwealth that retained relevance to the old dominions — and especially Australia and New Zealand — but was much less readily applicable in the context of post-war Asian decolonisation. He failed in the attempt to translate an understanding of the development of dominion status, derived from his analysis of the evolution of legal relations between the United Kingdom and the dominions, to a context in which they were no longer so obviously relevant.\textsuperscript{79} Evatt thus summarised the course of empire history:

First, the period of complete subordination of the Colonies. This period ended with the American Revolution. Secondly, the long and successful struggle against all forms of Imperial intervention in the local affairs of British colonies ... Thirdly, recognition of the self-governing Dominions as possessing a formal and final status equal to that of Great Britain. Fourthly, a new recognition of the need of complete cooperation among the British Commonwealth of nations, with flexible machinery to ensure such co-operation, especially in matters of defence.\textsuperscript{80}

This is indicative of the mental framework that Evatt brought to the task of dealing with India. As Alan Renouf has shown, Evatt saw "the British Commonwealth

\textsuperscript{75} Cable X630, UKHCl to CRO, 30 March 1949, DO 35/2207, PRO.
\textsuperscript{76} Nehru to Patel, 26 March 1949, in Das ed., \textit{Sardar Patel’s Correspondence 1945-50, Volume VIII}, p.5.
\textsuperscript{78} Cablegram E6, Evatt to Beasley, 23 April 1949, NAA:A1838/283, TS 899/6/1.
\textsuperscript{80} \textit{The Times}, 30 May 1942.
pattern”, whereby colonies had gradually achieved self-government within the empire, as relevant to other situations in which there were pressures for decolonisation. He recommended a form of dominion status for the Indonesians, which was “unacceptable to the Dutch and incomprehensible to the Indonesians”, and advocated a similar policy for Indo-China.\(^8^1\)

Evatt’s failure thus arose from his historicism and legalism. These were entwined with a commitment to notions of kinship deeply rooted in British antipodean culture, which sometimes blinded him to fundamental differences in perspective between old dominions such as Australia and New Zealand and the newly emergent nations of south Asia, and India in particular.\(^8^2\) As he had written in *The Times* in 1942, the “real tie” binding together the Commonwealth was “the tie of brotherhood and kinship, which transcends all material links and baffles definition”.\(^8^3\) This formulation was never likely to appeal to the new dominions.

So, despite his very real sympathy with decolonisation in Southeast Asia, the limits of Evatt’s liberal imagination had been revealed. Whereas for Australia the operation of the Prerogative had been able to “assimilate legal to political facts”, or at least make gradual progress towards this ideal through the orderly and gradual working of the common law, it did not follow that it could so easily respond to the “facts” of Indian political life. As Crockett comments, Evatt often “failed to understand cultural, political, racial and regional matters that lay beyond the exercise of international constitutionalism”.\(^8^4\) There is also no reason to doubt Renouf’s judgment that Evatt lacked a “feel” for emergent nations in Asia.\(^8^5\) For Evatt, recognition of the king’s prerogatives was, in the end, the only constitutional and legal manner in which a Commonwealth nation could announce to the world its Britishness. His problem was that India’s policy-makers did not see their new nation as “British”, nor did they see the Europeans of the UK and the dominions as their kin.

**Conclusion**

There is a popular nationalist view of Australian history. The Australian colonies federated in 1901; they became a Commonwealth, but remained a colony in substance because of Australia’s cultural, military and economic dependence on the UK. Australia had a “cultural cringe”. Australia was a part of the British Empire, and Australian governments, with a few honourable exceptions, did what they were told by their imperial masters. They were the victims of British bungling on the battlefields of Gallipoli and France. Then, in December 1941, Prime Minister Curtin made an appeal to America for help. The UK betrayed Australia,

\(^8^1\) Renouf, *Let Justice be Done*, pp.176 and 269; Crockett, *Evatt*, p. 229.


\(^8^3\) *The Times*, 30 May 1942, quoted in Crockett, *Evatt*, p. 51.

\(^8^4\) Crockett, *Evatt*, p. 229.

\(^8^5\) Renouf, *Let Justice Be Done*, p. 192.
leaving it undefended; and Singapore fell. Australia now began to grow up, although it was arrested development under the leadership of that notorious Anglophile Menzies. Labor, on the other hand, was the party of Australian nationalism. In one version of this tale Australia becomes “Austerica”, the fifty-first state of the United States. Naturally, the myth has a teleology: when Australia becomes a republic, it will finally have removed the last vestiges of colonial status. It is a testament to the power of this myth that it has had a prominent run in Australian politics in the 1990s. Evatt himself expressed a version of it to an Irish diplomat in 1949. After the attack on Pearl Harbour, he said,

Churchill had gone at once to Roosevelt to ask him to let the Pacific field lie undefended and to throw everything into the war in Europe — this although Germany had not attacked the U.S.A ... Australia was to be left even without her own troops which were in the African campaign; and Churchill’s idea was that Australia could be recovered when the Germans had been defeated. The last war had opened Australia’s eyes to the kind of support she could expect from Britain ...

There is now a large body of cultural, political, economic and social history that undermines this myth in various ways. It is a demonology; there is no room in it for ambivalence.

As we have seen, however, there is much evidence to support the contention that Evatt, in his rhetoric about kinship and kingship, was no simple-minded radical-nationalist. It is indeed ironic that Evatt, now an icon of the Labor left and much maligned by Australian conservatives, should have been so enthusiastic in his monarchism. In the 1990s support for the monarchy is almost non-existent on the left in Australian politics. Yet it is a reminder that the Australia of the 1940s remained, in many respects, a British nation. As we have seen, this axiom had acceptance in Labor Party circles: it was based on an intricate web of European ideas about ethnicity, race and nationality that had evolved in the antipodes since the middle of the nineteenth century. Whiteness, Britishness, Australianness and Irishness (or perhaps Celtic identity) were among the overlapping, and sometimes contradictory, identities available to Australians of the 1940s. It is hardly surprising that a government entering the foreign policy field in a significant way for the first time should have expended so much of its energy grappling with these concepts and their implications for Australia as an independent actor in international affairs, with special interests in the South-East Asian and Pacific region.

Evatt’s emphasis on kinship and kingship in his Commonwealth diplomacy recalls the colonial politician Henry Parkes’ famous reference to “the crimson thread of kinship”. Indeed, in some respects, Evatt’s attitudes had more in common with such nineteenth-century Australian liberals as Parkes and George Higinbotham than with those of the modern left who have raised him to the status of Labor legend since his death. The American scholar C. Hartley Grattan, a close friend of Evatt, made this very point when he recalled that “Evatt, evidence to the contrary notwithstanding, was far more an Australian Briton (to use Alfred

86 Kiernan, Minute, 24 January 1949, Department of External Affairs, Ireland, Canberra D/1/11, NAI.
87 See Davidson, From Subject to Citizen, pp. 68-72.
Deakin’s honorific) than was, or is, commonly supposed.” 88 This, in turn, points to the importance of cultural nationalism as a foundation of modern republicanism in Australia. Modern cultural nationalism is frequently (although by no means exclusively) still defined in relation to a British “other”, whereas Evatt’s attitudes to Britain were characterised by ambivalence.89 As an advocate of neither a separatist nationalism nor an old-fashioned imperialism, Evatt’s thought represents a key transitional phase in the development of modern Australian political identity. This perhaps helps explain why Herbert Vere Evatt has remained so elusive a figure in Australian historiography.


89 See Crockett, Evatt, p. 232. He suggests that Evatt’s “ambivalence to Imperialism turned on admiration for British institutions and detestation of Imperial political and constitutional supremacy... Evatt’s attraction to the existing framework of the Empire was both enthusiastic and conditional, and his progressiveness comfortably co-existed within largely conservative constitutional structures”. One might add that Evatt was familiar with the ideas of the English liberals, and had clearly imbibed many of their values by the time he wrote Liberalism in Australia. It should not then surprise that he came to share their suspicion of empire. See Luke Trainor, British Imperialism and Australian Nationalism: Manipulation, conflict and compromise in the late nineteenth century (Melbourne: Cambridge University Press, 1994), pp. 1-3.