

THE 1950 – 1951 ANTI-COMMUNIST DEBATES AND HERD EVATT'S PARADOXICAL RELATIONSHIP WITH CIVIL LIBERTIES

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Synopsis

This thesis seeks to outline the paradoxical relationship that Australia's former Attorney General and Minister for External Affairs, Herbert Vere Evatt had with the preservation of civil liberties within Australia during his long and fruitful career.

It will attempt to challenge the historiographical consensus which has emerged that places upon Evatt's shoulders, a reputation as one of Australia's most ardent civil libertarians. In challenging such an entrenched perception, this thesis will draw extensively from the vast amounts of literature that has established the mantle upon which Evatt's reputation now rests.

In issuing such a challenge, it will use the anti-communist debates of the early 1950s as a means of demonstrating the extent of the paradoxes inherent in Evatt's relationship with civil liberties. Exploring the paradoxes of this relationship, it will seek to understand how Evatt's determined response to various forms of opposition that arose throughout this period contrasted markedly with the ambiguity that had characterised his early relationship with civil liberties.

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Introduction

There is an established historiographical consensus that Dr H.V. Evatt was the quintessential civil libertarian. This consensus has stood the test of time. Much of the basis for this consensus was Evatt's monumental struggle against Prime Minister Robert Menzies and his anti-communist initiatives in the early 1950s. However, the longevity of Evatt's reputation as a great civil libertarian should not rest solely upon the activities of such a short span of his long and successful career and life. What of Evatt's relationship with civil liberties prior to these debates? Was his liberalism as fervent prior to April 1950 as it was during the subsequent twenty-one months? And why, given the sheer scope and complexity of Evatt's life, career and achievements, have these two years persisted in being the basis upon which Evatt's reputation has been built. This thesis shall attempt to challenge the established historiographical consensus of Evatt as the champion of civil liberties by exposing in Evatt a paradoxical nature that characterised his relationship with civil liberties.

At its core, this thesis shall expose paradoxes inherent in Evatt's safeguarding of civil liberties by examining the nature of his determination to defeat Menzies' anti-communist initiatives. To this end it will look at Evatt's distinct departure from his traditional attitude towards civil liberties that occurred during this brief period. It was a departure characterised by his single-minded determination to preserve civil liberties in the face of legislative prohibitions that he felt went well beyond the mere illegality of the Communist Party of Australia. This departure can be delineated from the inconsistencies in his prior partnership with civil liberties. However, to assess the extent and significance of this departure, it is

necessary to establish a framework around which the determination of Evatt to persevere throughout the debates might be best assessed.

The primary means of assessing extent of Evatt's paradoxical relationship with civil liberties will be by comparing his behaviour during the anti-communist debates with his past experience with civil liberties. To this end, it will look at his career prior to 1950 and, specifically, examine his propensity to be a ruthlessly pragmatic politician, often at the expense of his avowed liberalism. It will look at his career and how the circumstances of responsibility shaped and influenced the direction of his liberalism. From university through to the 1949 Coal Strike, it will seek to place in some perspective the relationship that he maintained with civil liberties and how this was a relationship littered with inconsistencies. The establishment of such a context will allow for an examination of how his single-minded determination during the anti-communist debates contrasted markedly with his prior relationship with civil liberties.

To best understand the extent of Evatt's departure from his traditional attitude towards civil liberties, this thesis will attempt to comprehend how three sources of opposition arose to challenge Evatt's efforts at defeating the proposed dissolution of the Communist Party of Australia. The three sources were the Australian Labor Party, Catholic anti-communists and the mainstream print media. Understanding the impact that these had upon Evatt's behaviour throughout the debates will provide the means by which a comparison between his attitudes and behaviours prior to 1950 differed from his determination during the debates. Each of these three pressures represents a specific facet of either the broader Labour movement or the Australian community. The emergence of such deep animosity

from these quarters will be looked at in the context of how Evatt responded to them. The determined resolve of this response will demonstrate why Evatt's commitment to the preservation of civil liberties throughout the debates reveals the inconsistencies of this relationship.

Literature Review

There has, over the past half century, been an enormous amount of published literature that has dealt extensively with the events that bore a direct relevance to the Cold War.¹ Whether these were events that contributed to the emergence of hostilities or were a consequence of them, their documentation is exhaustive and encompassing. Australia's was a Cold War experience that was shaped and influenced by a variety of contentious beliefs and values. These were due in a large part to both the Cold War's origins and Australia's political and social heritage. The literature that has sought to chronicle and document the struggle for global supremacy has also been indelibly and inevitably coloured by these beliefs and values. With this in mind, the Australian experience is one that has enjoyed comprehensive assessment through vast amounts of literature. It is into this vast amount of published literature that the events of 1950 and 1951, and the activities of one of the periods most active protagonists, Dr. Herbert Vere Evatt can be found.

A substantial amount of the literature that documents Australia's Cold War experience deals extensively with the activities of Dr. Evatt throughout anti-communist debates of 1950 and 1951. Inherent within a considerable amount of this literature has been the emergence of a historiographical consensus that Evatt was a staunch defender of civil liberties. Consequently, the years of 1950 and 1951 are commonly recognised as the pinnacle of both

¹ The Cold War had such a dominant presence across the world throughout the past five decades that a complete assessment and critique of the literature that deals with the events and people that had an impact on the world, or even individual nations throughout the Cold War would entail an incredibly time consuming amount of effort.

Evatt's career and civil libertarianism.² However, as much as this is literature that often highlights his achievements in these regards, it is also a body of literature that has failed to adequately assess the dynamics of the relationship that existed between Evatt and civil liberties. Addressing the failed recognition of the apparent inconsistencies that pervaded Evatt's relationship with civil liberties right throughout his judicial and political career is one of the concerns of this thesis.

As a consequence of the particular concern that this thesis has with the efforts, achievements and character of Dr. H. V. Evatt, both before and throughout 1950 and 1951, there has been a need to look beyond the textual histories provided by general studies of the period. To fill the short-comings associated with such histories of the period, both biographical and specific historical research has been invaluable. The published biographies of Evatt provide great insight into him as a person. They illustrate how both political and personal perspective shaped and influenced his actions throughout his life.³ However, as with all biographies, the authors infuse their own prejudices and preconceptions into the texts. This inevitably lends shape and content to the portraits they paint. Adding to what content is derived from the text by the reader is the approach taken by an author towards the development of an understanding of their subject.

² Laurence W. Maher, 'Downunder McCarthyism: The Struggle against Australian Communism 1945-1960 Pt. 2,' in *Anglo-American Law Review* No. 27 1998, pp. 444 - 445

³ See examples. Peter Crockett, *Evatt: A Life*, Melbourne: Oxford University Press, 1993; Ken Buckley, Barbara Dale & Wayne Reynolds, *Doc Evatt: Patriot, Internationalist, Fighter & Scholar*, Melbourne: Longman Cheshire Pty. Ltd. 1994; Allan Dalziel, *Evatt: The Enigma*, Melbourne: Lansdowne Press Pty. Ltd. 1967; Kylie Tennant, *Evatt: Politics & Justice*, Sydney: Angus & Robertson Ltd. 1970. All of these biographies provide in depth and exhaustive analysis of Evatt, his life, politics and personal attitudes. Whilst each does so in different manners, they all base their assumptions and assertions upon commonly understood and documented circumstances.

The biographies of Evatt all contain distinctive similarities, such as details of academic, judicial, parliamentary and diplomatic accomplishments and how these contributed to various actions in any given circumstance. However, it is the differences in perspective unique to each biographer that provides for the diversity in understanding to emerge. Peter Crockett, Allan Dalziel, Kylie Tennant and Ken Buckley, Barbara Dale and Wayne Reynolds have all written intimate and comprehensive biographies of Evatt. Despite providing very similar histories of Evatt and his life, each of these differs in their approach, focus and clarity.

Ken Buckley, Barbara Dale and Wayne Reynolds' biography is both a very clear and comprehensive account of Evatt's life.⁴ This is a biography that develops a picture of Evatt that reconstructs his life by dividing it into six distinct segments. Each specific part of the broader narrative contributes greatly to the development of a clear and relatively balanced picture of Evatt. This is a biography that provides perhaps the most politically complex picture. Whilst it is a text that places considerably more emphasis on Evatt's role as an internationalist and a politician than it does on his avowed civil libertarianism, it is not a text that neglects the civil libertarianism inherent in Evatt's life. Due in a large part to the influence that civil liberties had upon his actions and responses to various events and issues, this is a theme continually touched upon throughout this text. This is by far the most comprehensive and accessible of Evatt's biographies.

⁴ Ken Buckley, Barbara Dale & Wayne Reynolds, *Doc Evatt*

Peter Crockett has written a biography that whilst, ineloquent and lacking clarity, provides significant insight into the nuances of Evatt and his character.⁵ As opposed to the structured appeal of the Buckley, Dale and Reynolds biography, Crockett's approach to the chronicling of Evatt's life is undertaken through a narrative constructed around key events in which Evatt played a significant role and how his personal character influenced his behaviour in these given circumstances. As disjointed and without chronological structure as this narrative is, when used in conjunction with the Buckley, Dale and Reynolds text, Crockett's piece provides a foundation upon which to extend an understanding of Evatt and the role which he had. This is achieved both from a personal and professional perspective. This is a text which is laden with levels of detail that prove ultimately detrimental in that the text becomes too weighed down by it. Of particular concern with regards to this thesis is the fact that Crockett quickly passes over the events of 1950 in favour of a more complete and detailed examination of 1951 and its ramifications. This proves detrimental to the value of this text in relational to the specifics of this thesis.

Two additional biographies stand apart from the previous two. Allan Dalziel⁶ and Kylie Tennant⁷ have both produced biographies of Evatt that address the man from distinctly different perspectives to the intimately comprehensive texts from Crockett and Buckley, Dale and Reynolds. Kylie Tennant's biography is soundly grounded in the political and judicial aspects of Evatt's long career. Indeed, its entire focus is the professional life of Evatt. And whilst it is a text that draws extensively from Evatt's character and early life, this is done as a means of contextualising Evatt's behaviour, action or response to the plethora

⁵ Peter Crockett, *Evatt: A Life*

⁶ Allan Dalziel, *Evatt: The Enigma*

⁷ Kylie Tennant, *Evatt: Politics & Justice*

of judicial and political circumstances in which he was to find himself. For this reason alone, it provides an excellent account of Evatt that deals explicitly with the official capacities in which he held. It also spends a considerable amount of time dealing with the events of the months that the anti-communist debates lasted.⁸

As Evatt's private secretary for twenty years⁹, Allan Dalziel's biography is able to infuse its recollections and accounts of Evatt with an anecdotal intimacy that few other biographers have been able to. Herein lays the value of this text. It is a text which provides a compelling and exhaustive portrait of a working and tireless campaigner from the perspective of one who stood alongside Evatt throughout a large portion of his tumultuous political career. It is a text which convincingly creates an image of Evatt as the civil libertarian. And whilst this is a text that shows heavy bias towards Evatt, an inevitability given the relationship that existed between the author and subject, it provides a testament to a man and his career with affection and honesty. The portrait of Evatt as described by Dalziel is one seldom found elsewhere. With its emphasis on Evatt and his role as a civil libertarian, this is a text that has proved invaluable to the particulars of this thesis.

However, so many of the events in which Evatt participated encompassed so much more than can be adequately transcribed within the biographies of one individual. To develop a more balanced and encompassing perspective, it is necessary to incorporate the published histories of other important figures integral to the events. To this end, it has been essential to understand the pivotal roles played other individuals in the anti-communist debates of the early fifties. Foremost amongst these texts are the biographies of Evatt's chief antagonist,

⁸ Kylie Tennant, *Evatt: Politics & Justice*, pp. 258-272.

⁹ Allan Dalziel, *Evatt: The Enigma*, p. ix. *Preface*

Robert Menzies and how the role which he played in these events influenced the actions of Evatt.¹⁰ The importance of texts such as these is that they provide an insight into the reasoning and rationale of those that stood ideologically opposed to Evatt and his efforts.

To further develop the aims of this thesis in such a manner that new light is shed upon Evatt and his paradoxical relationship with civil liberties, there has arisen the need to utilise other texts which provide insight into the organisations, as opposed to the individuals, that helped shape the events of the period. The texts that recount the histories of such groups and organisations as the Catholic-dominated Industrial Groups¹¹, the Australian Communist Party¹² and the Australian Labor Party¹³ have all been immensely beneficial. In addition to these specific texts, political and social histories of Australia have also dealt extensively with the events of 1950 and 1951 and the role that Evatt played in them.¹⁴ However, as these texts are indeed generalist histories which need to demonstrate an understanding of a broader historical context, the picture they present of specific events, such as the 21 month anti-communist debates, lacks a detailed clarity. Due to this, these are texts which lay broad foundations from which greater, more specific understandings might be derived from.

¹⁰ David Lowe, *Menzies' and the 'Great World Struggle': Australia's Cold War 1948-1954*, Sydney: UNSW Press. 1999

¹¹ Bruce Duncan, *Crusade or Conspiracy: Catholics and the Anti-Communist Struggle in Australia*, Sydney: UNSW Press. 2001

¹² Laurence Sharkey, *An Outline History of the Australian Communist Party*, Sydney: Australian Communist Party. 1944

¹³ Robert Murray, *The Split: Australian Labor in the fifties*, Melbourne: Cheshire. 1972

¹⁴ See examples. Bill Murray, *Crisis, Conflict and Consensus: Selected Documents illustrating 200 years in the making of Australia*, Sydney: Rigby Publishers. 1984; Bryce Fraser & Ann Atkinson (eds.), *The Macquarie Encyclopedia of Australian Events*, Sydney: The Macquarie Library. 1997 (Revised Edition); Humphrey McQueen, *Gallipoli to Petrov: Arguing with Australian History*, Sydney: George Allen & Unwin Pty. Ltd. 1984; Russell Ward, *A Nation for a Continent: The History of Australia 1901-1975*, Richmond: Heinemann Educational Australia. 1977.

For many H.V. Evatt is either a great and selfless civil libertarian or a driven and ambitious man who attached himself to the preservation of civil liberties more as a means of propagating what was to become an illustrious career. And whilst it cannot be argued that the latter holds true under close scrutiny, the line that separates these two distinct assessments is not nearly as clear and unambiguous as might be understood. With historical consensus heavily attuned to Evatt as the internationalist, the patriot and the civil libertarian, it is often forgotten that Evatt was just as much a realist and pragmatist. Therefore, this thesis will attempt to provide a balance between these two perceptions through an assessment of the paradoxical political life of Dr. Herbert Vere Evatt and his inconsistent libertarianism.

Evatt The Pragmatic Libertarian

There is now a general historiographical consensus that Evatt was a staunch defender of civil liberties. Undoubtedly Evatt's impressive efforts throughout the anti-communist debates of the early 1950s have contributed significantly to the emergence of such consensus. Yet, what of Evatt's relationship with civil liberties prior to 1950? Were his actions always guided by his commitment to the preservation of civil liberties? Or did he appreciate the limitations that were placed upon his avowed liberalism by the responsibilities of circumstance? The following chapter will seek to answer these questions by providing a portrait of Evatt's transition from an idealistic undergraduate to a persistent and frustrated politician. It will seek to expose the emergence of his paradoxical relationship with civil liberties.

Evatt entered the University of Sydney in 1912 using a number of impressive scholarships to pay his way.¹⁵ Prior to entering the university, Evatt's social conscience was limited by experience and youthful naivety. University changed this. As an undergraduate, Evatt's aspiring liberalism began to mature. His politics also began to take shape throughout these years due to the extensive contact that he had with his lecturers, fellow students and University administrators. Though many members of the university's faculty began to influence Evatt, it was Francis Anderson, a Philosophy lecturer who had perhaps the most profound influence upon Evatt throughout the formative years. It was Anderson who introduced

¹⁵ Ken Buckley, Barbara Dale & Wayne Reynolds, *Doc Evatt*, p. 7. Evatt won a bursary to the University, providing him with free tuition and textbooks; the Horn Scholarship awarded by St. Andrews College provided him with free lodgings and board. These are but two of the many prizes and awards that Evatt won throughout his time at the university.

Evatt to the anti-Marxist New Liberalism of Englishman T. H. Green.¹⁶ As such Anderson left an indelible mark upon Evatt and contributed greatly to the path that Evatt's politics was going to take. In nurturing this emerging kinship with liberalism throughout university, Evatt became deeply concerned with issues of social welfare and justice and the rights of the individual.

Unlike many of his contemporaries, however, Evatt distanced himself from the radical politics of socialism. He felt that only a more moderate form of socialistic politics would benefit society. Therefore, in seeking a more moderate approach to social activism, Evatt chose liberalism. As opposed to the strict and rigidly defined political perspectives of socialism, communism or even conservative politics, liberalism was a dynamic and evolving philosophy that allowed and encouraged open and challenging debate. The attraction to liberalism was also founded in a growing awareness and developing concern for the place that civil liberties and social justice had in Australian culture. Many of his essays of this period reflect these concerns.¹⁷

University also provided Evatt with a variety of extra-curricular activities that allowed his growing liberalism to flourish. Perhaps the most important and promising of Evatt's extra-curricular activities was his election as President of the Undergraduates Association in

¹⁶ Ken Buckley, Barbara Dale & Wayne Reynolds, *Doc Evatt*. p. 11.

¹⁷ Herbert V. Evatt, *Liberalism in Australia: An Historical Sketch of Australian Politics to 1915*, Beauchamp Prize Essay, University of Sydney, 1918. The essay dealt extensively with notions of the provision of equal opportunities for all as opposed to the egalitarianism that further far-left politics sought. Humanism, materialism and, as a consequence of his natural grasp of logic-based philosophy, rationalism all featured prominently in Evatt's writings of the period. Evatt also wrote extensively on issues of social concern in his capacity as editor of the university newspaper *Hermes*.

1915.¹⁸ This was a position that first placed Evatt in a capacity that enabled him to influence the direction of university policy. It also enabled him to campaign on behalf of the student body for improved rights and conditions. Whetting his taste for activism, the position gained Evatt a reputation throughout the student body as a representative of the highest order.¹⁹ This reputation provided Evatt with the support required to win the position of President of the Student Union. As the first undergraduate to achieve such a position, he came to the attention of the university administration, most notably, Sir William Cullen, Chancellor of the University and Chief Justice of New South Wales.²⁰

Aside from the influence that lecturers and extra-curricular activities were having upon Evatt's increasingly enthusiastic liberalism, Evatt surrounded himself with friends who were very much like-minded. Many were conspicuously more radical. Arguably the most prominent and influential of these friends was Vere Gordon Childe, a confessed socialist.²¹ Childe's influence left a tangible and resounding impact upon Evatt's political perspectives that were to last a lifetime. The extent to which Childe was to influence Evatt was seen in Evatt's distinct shift towards more radical politics. Whilst not embracing socialism and still holding on to the rhetoric of Green's New Liberalism, Evatt began to share some of the very grim perceptions of Australia's political future that Childe held. Fundamental to these concerns was a comprehensive understanding of the social repercussions that Australia's colonial history had had upon the people of Australia.

¹⁸ Ken Buckley, Barbara Dale & Wayne Reynolds, *Doc Evatt*. p.9

¹⁹ Ibid.

²⁰ Sir William Cullen employed Evatt as one of his secretaries whilst Evatt studied law and through this association was introduced to other members of the Bar who saw in Evatt an extremely bright and promising new lawyer.

²¹ See Kylie Tennant, *Evatt: Politics and Justice*. pp. 20-21.

After completing his Bachelor of Arts in 1915, Evatt set his sights upon developing his profound interest in the law and politics. In taking up law in 1916, Evatt was drawn to the areas of industrial and constitutional law: two fields in which Evatt felt especially comfortable. Evatt's adeptness for constitutional law was demonstrated with his winning the Pitt Corbett Prize for Constitutional Law in the first year of his legal studies. His Honours thesis, *The Royal Prerogative*, was a case study in Constitutional law.²² The foundations upon which his interests in these two aspects of the law can be found in his established interests in social justice and the rights of the underprivileged. Evatt's proclivity for academic achievement saw him finish his law degree in 1918.²³ He was admitted to the New South Wales Bar the same year.²⁴

As a young and promising lawyer, Evatt saw in the law the opportunity to rectify social inequalities, both domestically and internationally.²⁵ To this end he defended Irish rebels facing deportation, Sydney journalists facing libel suits and was selected as junior counsel in two very prominent cases involving Labor Party stalwarts.²⁶ In each of these cases, Evatt had found himself dealing with issues of free speech and censorship that would have appealed to his avowed liberalism. His reputation as a liberal lawyer was furthered in 1920, when he became attached to two further cases that were to have a major impact upon him.

²² Herbert V. Evatt, *The Royal Prerogative: A Study in Constitutional Law*. Nth Ryde, NSW: Law Book Co. 1987.

²³ Allan Dalziel, *Evatt: The Enigma*. p. 5

²⁴ Ken Buckley, Barbara Dale & Wayne Reynolds, *Doc Evatt*. p. 17.

²⁵ 'Doc' [Videorecording]: A Portrait of H.V. Evatt 1894-1965. Film Australia. 1995.

²⁶ Ken Buckley, Barbara Dale & Wayne Reynolds, *Doc Evatt*, pp. 21-23. These cases, involving T. J. Ryan, former ALP Premier of Queensland, suing the Melbourne newspaper *Argus* for libel after it alleged that Ryan's government was impeding the Australian war effort, and P. S. Brookfield, a militant trade unionist, accused of using insulting language at a workers rally were two cases that attracted Evatt due to the issues involved: freedom of speech, censorship and the use of surveillance by a governmental agency.

The Engineers' Case and the Edmunds Royal Commission elevated Evatt into the upper echelons of industrial law.²⁷ These cases exposed Evatt to those directly affected by the social adversity that had drawn him to liberalism in the first place.

The Edmunds Royal Commission demonstrated to Evatt that there was only a certain extent to which the law could go in remedying the social injustices that he was bearing witness to.²⁸ In recognising the limitations of the judiciary in the righting of these ills, Evatt began to increasingly politicise his activities. Through his membership of the ALP, which he joined in 1918,²⁹ Evatt appeared at numerous ALP events and functions between 1920 and 1925 in the lead up to various state and federal elections. Often he campaigned on behalf of the Labor candidate. Things changed in 1925, when he began campaigning on his own behalf in the NSW state elections for the Sydney seat of Balmain.³⁰ His eloquence and aptitude for expressing the concerns of the electorate's working class majority ensured Evatt a resounding victory.

²⁷ Kylie Tennant, *Evatt: Politics and Justice*. pp. 36-37. The Engineers Case was the test case in the High Court that established much of the parameters of State instrumentalities and the extent to which the Commonwealth could intervene in industrial disputes. The Edmunds Royal Commission was established to enquire into the administration of the NSW rail and tramways subsequent to the railways strike of 1917. The railway workers were alleging that there had emerged after the end of the strike in 1917, a climate of victimisation that was aimed at denying striking workers a return to their former positions. Evatt, as junior counsel for the govt. was responsible for interviewing many of victimized workers and their families.

²⁸ Ken Buckley, Barbara Dale & Wayne Reynolds, *Doc Evatt*. p. 30. The victimization that was related to the Commission by witnesses left an indelible mark upon Evatt and his avowed liberalism. Evatt began to increasingly sympathise with those workers and their families most adversely affected by the behavior of the railways management.

²⁹ Peter Crockett, *Evatt: A Life*. p. 64. Throughout his time studying the law Evatt's sympathies for the underprivileged coloured his escalating left-wing perspectives, culminating in his joining the Australian Labor Party in 1918.

³⁰ Kylie Tennant, *Evatt: Politics and Justice*. pp. 47-48. Evatt won both the Labor Party pre-selection and the subsequent election with clear majorities. The seat itself was won with 13,331 votes tallied for Evatt with his nearest rival accounting for 6,045 votes. It was a dramatic entrance for Evatt into the world of parliamentary politics.

With the Labor Party, led by J. T. Lang, achieving office in NSW, Evatt was not alone in his concern for the underprivileged. With colleagues who appeared to share his attitudes on issues of civil liberties and the rights of the individual, it looked as though Evatt had found a niche in which his politics and social agenda could flourish. However, Evatt was not a seasoned politician. His forceful and stubborn disposition was renowned, and whilst that made him a tenacious and successful litigator, in the world of party politics, it initially put fellow MPs off-side.³¹ He was undoubtedly uncomfortable with the idea that he was to be expected to defer on both positions to which he aspired, such as that of Attorney-General, and in his opinions to less able men, merely because they had been in the 'game' for much longer. It was not in his character to sit idly by when he recognised a situation in which he felt he could better contribute. His ALP colleagues began to see Evatt, not for the intellectual and judicial prowess that he brought to the ALP, but for the challenges he was unintentionally issuing to the established traditions of the Party.

He was forced to quickly adapt to the nuances of party politics, and as a consequence began to demonstrate a pragmatic idealism. He still extolled the virtues of liberalism, but began to recognise the need to balance the pursuit of his social concerns with an increasing appreciation of the mechanics of government and partisan politics. He understood that there was a need to placate his colleagues on many occasions if he was to become an effective participant in the government. It was such placation that led to Evatt's concern for civil liberties and the rights of the individual being placed under some considerable strain throughout his time as a state parliamentarian.

³¹ Peter Crockett, *Evatt: A Life*. Ch. 1. A detailed examination of Evatt's character that incorporates an assessment of his behaviour, nature and the attitudes that he held towards his family, friends, colleagues and opponents.

Evatt was a man who suffered no fools, but in doing so he often failed to recognise that many of his colleagues shared many of his social concerns. The Lang government, which maintained strong links with the union movement, had an impressive legislative record in terms of social and industrial governance.³² Evatt was an integral part of the success of this government's legislative record despite lacking a ministerial portfolio. Evatt was perhaps the best versed of all politicians, knowing the details of almost all tabled legislation. He argued eloquently and with resounding effect during debates, most notably during those concerning industrial or social issues, and in particular the Forty-Four Hours Week Bill, quoting extensively and rebuking opposition rebuttals with a style and presence that made colleagues proud and adversaries wary of his immense wealth of knowledge.³³

In many parliamentary debates, the lawyer and academic in Evatt shone through. His ability to recall relevant facts, figures and precedents made Evatt one of the ALP's most beneficial and invaluable assets. His knowledge of constitutional law contributed to Labor's successful legislative record. Yet, in spite of these often-successful efforts on behalf of his Party and parliamentary colleagues, to many he was still an outsider. By 1929, Evatt was considering a shift back into the judiciary. Always the lawyer, he became frustrated at the inability of government to look beyond partisan politics on issues that he felt relevant to the social well-being of his constituents. As many of the Labor Party members were from the unions, the

³² Russell Ward, *A Nation for a Continent: The History of Australia 1901-1975*. Richmond: Heinemann Educational Australia. 1977. pp. 181-182. The Lang government maintained strong links with the working classes and unionists. This governments' civil and social legislation was significantly rooted in the relationship that the administration maintained with this support base.

³³ Ken Buckley, Barbara Dale & Wayne Reynolds, *Doc Evatt*. p. 53. The Forty-Four Hours Act changed NSW industries by providing its workers with more recreation time, improved conditions and greater flexibility. It stands as one of the most important steps in Industrial law ever taken by a state or federal government.

divide between the working class ethos that had long defined the party and its policies for so long clashed with the perceived elitism of Evatt. With tensions emerging within the Lang government, Evatt sensed that the time was right to make a move out of state politics and back into the judiciary.

In 1930, at the age of thirty-six, Evatt became the youngest Justice to ever be appointed to the bench of the High Court.³⁴ His appointment to the High Court provided a stark contrast to the traditionally conservative members of the bench. Evatt's appointment was the result of the Federal Labor government grasping the opportunity to appoint members to the bench that were known to have left-wing sympathies.³⁵ However, as much as the ALP government hoped to infuse the bench with some much sought after liberalism, Evatt may have been the wrong choice. Evatt was, for all his left-leaning politics, dogmatically adherent to the sanctity of the law. He would rule in accordance with the established law and recognised precedents, often irrespective of his own recognised political tendencies. However, his reputation as a civil libertarian and social progressive were enhanced in 1932 when he became the most vocal member of the Bench in its decision to reject the Commonwealths attempts to ban the CPA through the use of the Crimes Act of 1914.³⁶ On the bench, Evatt

³⁴ Graham Fricke, *Judges of the High Court*, Hawthorn: Century Hutchinson Australia P/L. 1986. p. 109.

³⁵ Terry Irving, 'The Growth of Federal Authority: 1929-40,' in John Faulkner & Stuart Macintyre (eds.) *True Believers: The Story of the Federal Parliamentary Labor Party*, Crows Nest: Allen & Unwin. 2001. pp. 65-66. Caucus undertook the Appointment of Evatt to the High Court in 1930 against the wishes of Prime Minister Scullin and Attorney-General Brennan, who were overseas at the time. The fact that Caucus felt that the time was right to fill the vacancies on the High Court with two sympathetic Justices indicated tensions in the federal government concerning the role that the government felt the High Court had in the coming years with some arguing that the institution was becoming obsolete due to the impediments that some its decisions were placing upon Labor's policy initiatives.

³⁶ Laurence W. Maher, 'Downunder McCarthyism: The Struggle against Australian Communism 1945-1960 Pt. 1,' in *Anglo-American Law Review*, No. 27, 1998. p. 350. *R v. Hush ex parte Devanney*

found himself, once again in his element, free from the pressures associated with partisan politics.

As much as Evatt found comfort in the structure and routine of the Court, by 1938, the world was a rapidly changing place. The political landscape of Australia was beginning to reflect these changes and Evatt recognised this. In 1940, after ten years on the bench, Evatt felt that he was in a position to play a major role in the politics of wartime Australia. With frustrations that resembled those that sent him into State politics, coupled with Prime Ministerial ambitions, Evatt resigned from the High Court. He was elected to federal parliament as the Member for the NSW seat of Barton.³⁷ Soon after there was a change in government and Curtin led a return of the ALP to power. With the ensuing war, Evatt's intellect and legal experience quickly led to his acquiring the joint portfolios of Attorney-General and Minister for External Affairs. It was in these two capacities that Evatt was to best demonstrate the extent of the contradictory nature of his relationship with civil liberties.

Domestically, the Attorney-General's portfolio meant that Evatt had the responsibility of drafting legislation. With the heightened tensions of wartime, this meant that Evatt and his department set about addressing, through legislative restrictions, the apparent threat posed to Australia by the Communist Party. Historically, Evatt had an aversion to creating legislation that placed restrictions upon an individual and their right to affiliate with any political party or organisation. Yet, with war came new pressures. Before the 1941 invasion of the Soviet Union by Nazi Germany, many Australians feared that the non-aggression pact between those two countries would stir up subversive activity in Australia's communists in

³⁷ Peter Crockett, *Evatt: A Life*, p. 91.

an attempt to impede our war effort. As a consequence of such fears, the Menzies government had placed a ban upon the CPA under the authority of National Security Act.³⁸

As Attorney-General, Evatt's aversion to restrictive legislative prohibitions clashed with his responsibility to provide legal protection to the Australian people in a time of war. As demonstrated by the Engineers' case,³⁹ he understood the responsibilities of his professional obligations. Accordingly, dealing with communism was fundamentally similar. Evatt had to set aside his liberal predisposition and accept that, with Cabinet's continued recognition of the great public support that the ban enjoyed, it was to remain in place.⁴⁰ In reluctantly agreeing with his fellow members of Cabinet, Evatt did not see it in the nation's best interests to remove the ban. The decision to maintain the ban indicates the priorities that Evatt placed upon the responsibilities associated with his office. The failure to quickly rescind the ban implies that, in spite of the liberalism inherent in so many of his actions, Evatt was a person who held his professional obligations in the highest regard.

As much as domestic issues were inhibiting Evatt's affection for civil liberties, as Minister for External Affairs, Evatt was provided with a means of embracing his concern for civil

³⁸ Peter Love, 'Australia's Cold War,' in Peter Love & Paul Strangio (eds.) *Arguing the Cold War*, Carlton: Red Rag Publications. 2001. p. 13.

³⁹ Kylie Tennant, *Evatt: Politics and Justice*. p. 36. The Engineers Case was the test case in the High Court that established much of the parameters of State instrumentalities and the extent to which the Commonwealth could intervene in industrial disputes. This was perhaps the first case that indicated that Evatt was not wholly motivated by his liberal attitudes for if he and his colleagues had been successful, the progression of a fair industrial relations policy right throughout the various states would have been severely hampered.

⁴⁰ Ibid. p. 148. The ban placed upon the CPA by the Menzies-Fadden Government had never sat too well with the federal ALP. However, there were domestic issues mitigating circumstances as well in that, despite the ALP's misgivings about the ban, the party could ill afford the accusations of associating with communism. The Australian community still held the CPA in deep suspicion, and consequently the ban enjoyed widespread support, even after 1941 and remained in place until 1942.

liberties and social welfare. Through his activities concerning this portfolio, he has been credited with establishing the independence of Australia's foreign policy. This was done aggressively throughout the Second World War, where he travelled extensively, both to England and the United States, in order to strengthen and maintain Australia's continuing war efforts. As the war drew to a close, Evatt began to use his considerable legal intellect to become influential in the affairs of the peace process. His internationalism became renowned as he advocated the participation of the lesser powers in world events. Evatt's encouragement of Indonesian independence was indicative of this growing enthusiasm for the establishment of independent states capable of unfettered self-determination.⁴¹

The post-war peace process provided Evatt with an arena in which his liberalism and internationalism were to shine. At the San Francisco peace conference, Evatt became widely respected for his ability to recount in detail many of the treaties circulating throughout the many conference rooms. Though as with his parliamentary colleagues back in Australia, his blustering style often left his counterparts stammering in indignation. Yet, Evatt's internationalism and unwavering belief in the right of the smaller countries to contribute to the peace process is indicative of his long held social idealism. In this global arena, Evatt's liberalism was free from the domestic constraints associated with partisan politics.

Between the end of the war and 1949, when perhaps the most comprehensive challenge to Evatt's civil liberties record arose, he worked tirelessly in the international arena to further

⁴¹ Russell Ward, *A Nation for a Continent*. pp. 288-289. Under considerable pressure from Great Britain, who was itself fearful of post-war anti-colonialism, PM Chifley and Evatt cautiously debated the issue of Indonesian independence. With the Dutch moving forward with contingency plans for the re-establishment of its colonial administration, Australian waterside unions forced the governments hand by refusing to handle Dutch vessels suspected of carrying supplies for the Dutch colonial forces.

his liberal agenda on a global scale. The pinnacle of this period was his election to the position of President of the General Assembly of the United Nations. However, in spite of the progress being made by Evatt at the UN, events at home were conspiring to expose the contradictions in Evatt's commitment to civil liberties. In 1949, the Australian Miners' Federation called a strike throughout the coalfields of NSW. The response from the Labor government was ruthless. Under executive direction, plans were drawn up to embark on a series of hostile strike breaking programs. Central to these plans was the deployment of the Army to replace striking miners throughout the coalfields. Evatt was withdrawn from the UN by Chifley in order to deal with the legalities of such actions by the government.⁴² Contributing to such extreme actions were the efforts of the federal ALP to allay fears that it was soft on communism.

The 1949 coal strike demonstrates perhaps one of the most telling inconsistencies evident in Evatt's relationship with the preservation of civil liberties. He had succumbed on numerous occasions to the necessities of public office, at times promoting courses of action that would provide impediments to the preservation of civil liberties, such as the Approved Defences Projects Protection Act, which sought to remove communists from the Woomera rocket range.⁴³ He had nevertheless been able to maintain, at least to some degree, his avowed

⁴² Phillip Deery, 'Chifley, the Army & the 1949 Coal Strike', *Labour History*, No. 68. May 1995. p. 83. Evatt provided the government with the legal avenue, through the invocation of Army Order 1601, required to circumvent Section 51 of the Defence Act, 1903, which prohibited the use of Service personnel in the resolution of industrial disputes. Order 1601 was dependent upon the consent of the Minister for the Army.

⁴³ Tennant, *Evatt: Politics and Justice*, p. 212. The fear existed that the CPA, through its influence in numerous trade unions would impede the defence plans of Australia and its allies through disruptions to the weapons testing and development underway at the Woomera rocket range. Evatt drafted the legislation that made it offence for 'any person who by speech or writing advocates or encourages the prevention, hindrance or obstruction of the carrying out of any approved defence

liberalism. The coal strike changed this. As Attorney-General, it was Evatt's responsibility to provide the government with the appropriate legal avenues with which to pursue striking NSW coal miners. Due to the coalmining industry's essential place in the Australian economy, there was a haste required to bring an end to the strike. The government was adamant that it would not capitulate to the striking unionists, for many within Caucus saw the strike as a political, not industrial dispute inspired by the CPA. To capitulate any ground to the CPA during these initial stages of the Cold War was to commit political suicide. Accordingly, Evatt began drafting the National Emergency (Coal Strike) Bill. When coupled with the use of the Army as strike breakers, the draconian measures established by this legislation effectively disabled the traditional tactics of the unions and how they applied political and industrial pressure.

Considered an outrageous departure from Labor traditions, the bill forbade the provision of any aid, financial or otherwise, to the striking unionists.⁴⁴ Effectively ostracising the striking coalminers, the ruthlessness with which Evatt sought to end the strike demonstrated the fitfulness of the relationship he maintained with the preservation of civil liberties. In this situation he appeared more than willing to forego the industrial and civil rights of a group of workers when he felt that their demands and the measures that they were using to achieve such demands placed unwarranted risk upon Australia's national and economic interests. As the most grievous departure from his traditional political tendencies, Evatt's actions throughout the Coal Strike seem to be the antithesis to the course he was to take throughout the anti-communist debates of the early 1950s.

project.' The legislation was specifically aimed at curtailing the increasingly hostile attitudes of the CPA. These were attitudes that reflected the directives of the recently established ComIntern.

⁴⁴ Ken Buckley, Barbara Dale & Wayne Reynolds, *Doc Evatt*. p. 346.

We have seen, therefore, that the contradictory nature of Evatt's relationship with civil liberties owed a lot to the responsibilities of office. In the more structured and procedural realms of the judiciary, his liberalism was confined only by the briefs he accepted or the precedents applicable to the cases brought before him. In the judiciary, whilst he was not accountable to a constituency or a party, he held the sanctity of the law as paramount. However, he was an ambitious man and the limitations of the legal system greatly frustrated Evatt and his desire to be an integral part of this country's political landscape. In moving into politics, he had hoped to utilise his avowed liberalism to great benefit. This was not to be the case. The realities of parliamentary politics placed great strain upon the relationship that he maintained with civil liberties. As a consequence, Evatt demonstrated a willingness to curtail his libertarianism that highlighted the temperamental nature of his relationship with civil liberties.

The ALP and Evatt

When the Federal Parliamentary Labor Party regrouped in early 1950 in the wake of the disastrous election of December 1949, much had changed since the previous year. It no longer held government in the House of Representatives and its earlier dominance in the Senate was tenuous at best. And whilst these changes were to have a significant influence in parliament, it was in other spheres of the ALP that the most divisive and damaging struggles were to take place. The issue was to be communism. It was an issue that was to be the cause of serious tensions and widespread animosity throughout the ALP. This chapter will explore the pressures that arose as consequence of these internal struggles and how they shaped and influenced Evatt's actions throughout 1950 and 1951. From the hostility and apprehension of the Federal Executive to the constant and unyielding anti-communism of the Industrial Groups, the Labor Party in the early Cold War was not the ideal environment for Evatt's temperamental libertarianism.

The 1949 election had done more than simply strip the ALP of power. Nationally, changing demographics had reshaped both the House of Representatives and the Senate. Each had increased in a rise that reflected Australia's post-war population growth.⁴⁵ With such enlargements to Parliament, and despite losing its controlling share of House of Representatives, the ALP actually emerged from the election defeat holding more seats than

⁴⁵ Robert Murray, *The Split: Australian Labor in the Fifties*, Melbourne: Cheshire Publishing, 1972. p. 66. The House of Representatives had increased from 74 to 123 electorates and the Senate, in accordance with the demands of the Constitution, had seen a jump from 36 to 60 members.

it did before the election.⁴⁶ In addition to the increasing size of parliament, the departure of old members saw the FPLP welcoming many new members to Parliament. A number of these members were to have a profound impact upon the direction that the Party and Evatt were to take over the coming months.

Given the pervading political climate of the era, many of these new members, especially in the lower house, were staunchly anti-communist. This was especially true of a new clique from Victoria. This new group of MP's was not only staunchly anti-communist, but also younger (for the most part), better educated and largely Catholic.⁴⁷ This Victorian clique issued an implied challenge to the more moderate, longer serving members of Caucus: either act decisively on the issue of Communism or risk becoming left by the political roadside. Taking as a sign Labor's recent defeat, the impetus behind this challenge was understandable. When coupled with the loss of the election, the arrival of these new members with their ever growing frustrations concerning communism, greatly aggravated a deeply scarred and still-reeling Caucus. Nevertheless, this was an aggrieved Caucus that could ill-afford to dwell on its losses for too long.

To many in the Labor movement, the challenge that had been issued by this new clique was justified. The impression grew that the Party was, at best, indecisive regarding communism

⁴⁶ Robert Murray, *The Split*. p. 66. The ALP held 47 seats in the House of Representatives instead of the 43 that would have been expected given the 46.69% share of the vote that it held as a result of the election result. With the huge increase in Senate numbers, the ALP held 34 of the 60 Senate positions.

⁴⁷ Sean Scalmer, 'Crisis to Crisis: 1950-66,' in John Faulkner & Stuart Macintyre (eds.) *True Believers: The Story of the Federal Parliamentary Labor Party*, Crows Nest: Allen & Unwin. 2001. p. 91. Among this Victorian group were a number who had experience in white-collar employment or trade unionism. Their background was not so much in industrial disputes, but in long and heated battles with fellow trade unionists and communists. Such a background ensured that their priorities were destined to clash with what Chifley and Evatt saw as the foundational socialist principles of the ALP.

and how best to deal with it. This was despite its long history of anti-communist activity such as the implementation of legislative and administrative prohibitions, the establishment of the ALP Industrial Groups and the 1949 Coal Strike crack-down.

Labor Leader Ben Chifley attributed the ALP's resounding defeat to the 'constant barrage over radio and in the press whereby the Opposition succeeded in linking communism with socialism and socialism with the Labor Party and so creating a fear complex in the minds of a percentage of the middle-class'.⁴⁸ Given admissions such as this, and the apparent disregard of the electorate to the ALP's prior anti-communist efforts, Labor appeared to be a party that had been comprehensively out-flanked by the rhetorically more aggressive Menzies. Whether it was the constant barrage from Menzies and his colleagues or complacency on the part of the ALP in capitalising on issues such as the Coal Strike and the burgeoning Cold War, sections of the Party believed that its record on communism had been a contributing factor in the election result.

With the undoubted potency of communism as an effective weapon against the ALP, the domestic political climate of the early Cold War demanded that the FLP face the prospect of continued parliamentary decline if it failed to effectively recognise and respond to the issue of communism. Such demands did not recognise Labor's past record on communism, but rather its current political position. Therefore, to address these demands, what was required of the Party was the adoption of a position and set of policies concerning communism that was both aggressive and distinct from the pervasively popular Menzies proposals. Yet, Labor failed to do this before Menzies tabled the Communist Party

⁴⁸ Graham Freudenberg, 'Victory to Defeat: 1941-1949,' John Faulkner & Stuart Macintyre (eds.) *True Believers: The Story of the Federal Parliamentary Labor Party*, Crows Nest: Allen & Unwin. 2001. p. 89.

Dissolution Bill on the 27th April 1950.⁴⁹ The ALP's initial response did little to condemn the extensive implications of these measures. The Party wavered and deliberated as to what ramifications these proposals might have. Eventually the Party began to understand the dangerous implications of these proposals; explicitly illustrated when Menzies named, in Parliament, fifty-three unionists as Communists, five of whom were not.⁵⁰ The failure to initiate a clearly defined response in the early stages of Menzies' campaign had placed the Labor Party in the unenviable position of playing catch-up yet again.

Whilst playing catch-up politics, the atmosphere within the ALP deteriorated. Contributing to this deterioration was the Bill itself. Essentially, the Bill sought to punish persons, not for their actions, but for their beliefs. For the leadership of the ALP, namely Chifley and Evatt, this was an abhorrent notion that threatened the fabric of Australia's democratic principles as nothing before. Yet, for other, newer and more hardline elements in the ALP, these were measures that were not only necessary, but overdue. However, these elements of the ALP, most notably the Industrial Groups and their parliamentary supporters, were not in the mood to follow blindly in the advice of its leadership. What emerged was a far more conflictual relationship between Chifley, Evatt and 'Old Caucus' and the new, more aggressive industrial right that was emerging as a dominant force within the ALP.

⁴⁹ David Lowe, *Menzies and the 'Great World Struggle.'* p. 65.

⁵⁰ Ross McMullin, *The Light On The Hill: The Australian Labor Party 1891-1991*, OUP: Melbourne, 1992. p. 257. Menzies named these 53 officials as a means of demonstrating the pervasiveness of Communist infiltration in Australia's trade unions. He sought to highlight the imperative need for his proposed legislation. However, in his haste to provide clear examples of Communists to parliament, he had to admit to being mistaken about 5 of those nominated. The declaration of these unionists highlighted how the arbitrary nature of legislation such as that proposed by Menzies was open to wide and vengeful misappropriation.

This factionalism had pervaded all aspects of the ALP, from the FPLP to state branches and the Federal Executive. It had created in the ALP a climate of suspicion and bitterness that influenced and shaped allegiances. These allegiances and relationships often proved to be the determining factor in Party debates. Therefore, when the Federal Executive, the body responsible for the implementation of Party policies, began dealing with the anti-communist debates, factionalism was once more at the fore. There emerged two distinct influences upon the Federal Executive. There were those members who drew their direct support from the Industrial Groups and were intent on impeding all efforts to stymie the proposed legislation. Then there was the more moderate members who recognised the risks associated with the legislation and sought to have the ALP oppose it. The emerging climate of untempered internal conflict heralded a dramatic shift in how the Party was able to operate effectively as a party in Opposition.

The entrenched factionalism meant that the response of the Federal Executive was ambiguous and contradictory.⁵¹ It was a response that was trying to reconcile the two divergent attitudes towards the issue of banning the CPA which had emerged within the ALP. The widespread fears of rampant communist infiltration meant that the more aggressive and confrontational of these attitudes ultimately prevailed as the debates progressed. Thus, given the success of the government in associating the ALP with the CPA throughout the election campaign and the effectiveness of communism as an anti-Labor tool, the permeation of this attitude throughout the Party's leadership is understandable.

⁵¹ Patrick Weller & Beverley Lloyd (eds.), *Federal Executive Minutes 1915-1955: Minutes of the Meetings of the Federal Executive of the Australian Labor Party*. Melbourne University Press: Melbourne, 1978. pp. 412-413. Its statement issued on the 9 May, 1950 indicated that the Federal Executive was trying to reconcile the ALPs commitment to the principles of democracy, which held the proposed ban as a repugnant course of action, with the growing hostility of the Party towards the CPA.

Accordingly, the Federal Executive became overly preoccupied with distancing the ALP from the CPA. Such preoccupations were exemplified by the heated debates concerning even the Federal Executives most trivial dealings with the CPA, demonstrated on the 8 May 1950, when the Federal Executive exhaustively debated whether or not to open and read correspondence received from the CPA regarding the Communist Party Dissolution Bill tabled two-weeks previous.⁵² Meanwhile, the FPLP and Caucus had moved ahead with their own, much more considered response to the proposals.

The FPLP decided that it was going to lend its support to the proposals. Its support was conditional upon the insertion of two key amendments. The first placed the onus of proof back on the government and concerned issues of due process. It sought to safeguard the rights of an accused to be provided with proper processes of appeal. Such an amendment was designed to protect those who supported socialism, as opposed to communism, from becoming a declared person. The second amendment concerned civil liberties. The FPLP felt that restrictions on the legislation were warranted in order to protect civil liberties.⁵³ With its control of the Senate, it introduced these amendments. The Federal Executive, lost in its own debates regarding the Bill, endorsed this course of action with some trepidation. This endorsement was not to last.

The Federal Executive felt that it had a responsibility to preserve the tenuous position of the ALP in Parliament above all else. When the government-dominated Lower House rejected the amended legislation, it became apparent that the amendments were likely to be used by

⁵² Patrick Weller & Beverley Lloyd, *Federal Executive Minutes 1915-195*. p. 410. The extent and tone of this debate is indicative of the hostility that the ALP, particularly the Federal Executive had towards the CPA.

⁵³ *Ibid.*, pp. 421-422.

Menzies as the trigger for a double dissolution election. The Federal Executive began to question whether the preservation of civil liberties was worth the risk of further parliamentary losses. Consequently, it determined that its endorsement of the FPLP actions in May of 1950 was premature.⁵⁴ Therefore, by September, the Federal Executive had effectively neutralised the FPLP's oppositional capacity on this issue. Fearing for Labor's fate in a double dissolution election, it directed the FPLP to pass the measures without the amendments. By instructing the FPLP to pass the legislation, the Federal Executive had unwittingly provided Evatt with the means by which he could actively and aggressively campaign against the measures.

Unbeknownst to his fellow Labor colleagues, Evatt accepted a brief from the Waterside Workers Federation to challenge the Communist Party Dissolution Act in the High Court. His secrecy and lack of consultation was prompted by the hostility of the ALP towards the CPA in these tense months. He was aware of the fact that the ALP, and in particular, the Federal Executive would have impressed upon him the need to allow the unimpeded passage of this legislation. In spite of government reassurance, in Evatt's mind, the proposed measures were far more extensive and wide-ranging than a mere dissolution of the CPA. Accordingly, Evatt, Chifley and others who saw the repugnancy inherent in the legislation began a concerted effort to move the ALP away from directly supporting the proposals.⁵⁵ They argued strenuously that the measures were more than a threat to communism. They stressed that the very foundations of the democratic fabric of Australia's political landscape would be threatened by these measures. Yet, neither Evatt nor the universally respected

⁵⁴ Ross McMullin, *The Light On The Hill*. p. 258.

⁵⁵ Ibid.

Chifley could dissuade the Federal Executive from the perceived advantages of allowing the legislation passage.

As it became more apparent that the measures were to be passed, Evatt recognised that it was in the courts where the most effective means of defeating the proposals lay. Issuing such a challenge, though, was dependant upon passage of the legislation. Therefore, the encouragement lent by Evatt for the passage of the legislation in the final weeks of the first debate was a means of ensuring that the legal avenues of a High Court challenge would be available. And challenge it he enthusiastically did. In a complex and comprehensive legal challenge, Evatt successfully argued that the legislation adversely affected freedom of speech, and that it was the courts, not parliament, that held ultimate responsibility for assessing the facts in any criminal trial.⁵⁶ It was a challenge that was committed, inspirational and passionate. It was a challenge that was infused with a determined liberalism that contrasted markedly with the arbitrary nature of his past relationship with civil liberties. As the High Court challenge progressed he paid little attention to the increasing infighting occurring within the Party. But why, given the ambiguity of Evatt's past relationship with civil liberties, was he so determined to see the legislation defeated?

⁵⁶ Leslie Zines, *The High Court and the Constitution (Second Edition)*, Butterworths: Sydney. 1987. pp. 207-217. The High Court determined that the constitutional limitations of the Communist Party Dissolution Act related to the fact that the Federal government was seeking the capacity to arbitrarily 'declare' an individual without that individual being afforded the opportunity of a legal appeal. The Justices (except Justice Latham, who voted to uphold the legislation) felt that, as a practical matter, courts should be provided the opportunity to examine administrative discretion and assess whether or not it has been exercised in a wrongful manner or for a wrongful purpose. The Communist Party Dissolution Act removed the courts from the process and established administrative discretion as the means by which an individual were declared (it became to responsibility of the Attorney-General to issue an official declaration).

In Evatt's view, the Communist Party Dissolution Bill was a direct affront to the fundamentals of democracy and liberal freedom within Australia. It was this perspective that motivated his successful High Court challenge. Yet, the determination of his challenge demonstrated a conspicuous departure from his previous, ambiguous relationship with civil liberties. This determination was not to end with the favourable decision of the High Court. Ten days following the successful High Court challenge Menzies used the 'failure' of the ALP to pass the minor Commonwealth Bank Bill to trigger a double dissolution election.⁵⁷

This election finally handed the Senate to Menzies. With majority control of both Houses, he proposed a referendum seeking to have the defeated powers not only reinstated, but expanded.⁵⁸ The following campaign is widely considered Evatt's greatest triumph. He entered it with the same commitment and enthusiasm that characterised his High Court challenge. For him, the issues had not changed at all over the past eighteen months. He still considered the proposals too great a threat to let pass. Yet, unlike the debates surrounding the Communist Party Dissolution Act, the Labor Party entered this campaign with an agreed consensus. The Federal conference had determined that the Party was going to unequivocally oppose the referendum. In the same conference that saw the emergence of the Groupers as a significant faction within the ALP, the ALP rank-and-file decided upon a revision of the Party's policies, particularly those concerning the socialist origins of the ALP.⁵⁹ These socialist origins were seen to be the most threatened by the anti-communist proposals. However, the consensus that was achieved in order to back Evatt and his efforts

⁵⁷ Ken Buckley, Barbara Dale & Wayne Reynolds, *Doc Evatt*. p.360.

⁵⁸ See Appendix.

⁵⁹ Robert Murray, *The Split*. pp. 35-37

at preserving the fundamental principles upon which the ALP had been established were not necessarily shared by all within the Party.

The deteriorating atmosphere within the Party reached a boiling point as the campaign progressed. The State delegations and factions that had been intent on having the initial legislation passed now began to actively undermine the FPLP and Evatt. The efforts to undermine the 'NO' campaign from within were vicious and vindictive. Nonetheless, with a commitment, conviction and energy that never wavered, even as the Party tore itself apart, Evatt helped convince a majority of Australian's of these threats, slim as the majority may have been.⁶⁰ The success of Evatt's efforts sealed the immediate fate of the ALP. No longer did it hold any pretence of being a Party with any semblance of unanimity. Publicly, the ALP began the process of coming apart which culminated in the 'Split' of 1954.

The pressures that a disintegrating ALP placed upon Evatt were immense. However Evatt could do little to console the divided Party for he held that the success of the 'NO' campaign was more than a political victory. It was a victory for democracy. And it was democracy, not communism that was the overriding issue motivating Evatt's efforts throughout the twenty-one months of the anti-communist debates. Yet, given the hostility of the ALP towards Evatt throughout the anti-communist debates and his own temperamental history with civil liberties, it is difficult to comprehend why he upheld civil liberties with the conviction that he did. Reconciling that Evatt had always been, despite all the ambiguity

⁶⁰ Kylie Tennant, *Evatt*. p. 285. Evatt had convinced 2,370,009 Australian to vote NO to proposed legislation as opposed to 2,317,927 people who voted YES. The margin of 52,082 votes was one of the closest in recorded history and indicates the trepidation that many voters had in supporting Evatt and the NO campaign. It also indicates than only a slim minority of Australians were willing to endorse legislation that would have severely impeded their civil liberties.

inherent in his relationship with civil liberties, staunchly committed to the preservation of social justice and democracy and firmly adhered to the sanctity of the rule of law emphasises the inconsistencies that this thesis is striving to expose. Understanding that Evatt's belief in the sanctity of the freedoms that go a long way to defining Australian society goes a long way to explaining why Evatt stood against the changing and hostile tide consuming large portions of the ALP.

Evatt and Catholic anti-communism.

The divisions that had emerged within the ALP as a consequence of the anti-communist debates placed immense strain upon Evatt's libertarian mission. These were pressures that were pivotal in establishing the internal opposition that arose to meet Evatt. This chapter will examine perhaps the most significant source of internal opposition within the ALP: anti-communist Catholics. The role of the Catholic community within the Labor Party had an immense impact upon how the Party responded to Evatt and his actions throughout the anti-communist debates. This was an element of the broader labour movement that displayed an untempered hostility towards any and all who were not staunchly anti-communist.

This chapter will utilise the vast amount of published literature dealing with Catholic anti-communism to examine its impact upon Evatt's activities throughout the anti-communist debates. Additionally it will look at how the similarities and differences between its two most prolific apparatus, Catholic Action and the Movement, affected the extent of the Catholic opposition that arose in the face Evatt's efforts. It will address their beginnings, evolution and rise to prominence up until, and during the anti-communist debates. Additionally, it will examine the deteriorating atmosphere within the ALP and how the growing influence of the Movement and Industrial Groups contributed to both the deterioration and the opposition that arranged itself against Evatt from within the Party.

It is commonly recognised that the anti-communists in the Industrial Groups emerged as a considerable and influential force within the ALP at the 1951 Labor federal conference.⁶¹ The Industrial Groups were cells that were established by the ALP as a means of countering the influence of the CPA within the unions at the end of the Second World War.⁶² However, the Industrial Groups had for some time, been directed by elements whose loyalty was not in the ALP alone. Catholic anti-communists had established themselves as a dominating force upon these groups. Through Catholic Action and the Movement, Catholic anti-communism had increasingly been the driving force behind much of the ALP's anti-communist agenda. By the early 1950s Catholic Action, the Movement and the ALP's own Industrial Groups had become so integrated and complexly linked that any semblance of individuality and distinctiveness that had once existed had long since been clouded. The common goals of these various anti-communist elements within the ALP ensured that the transition from individual and independent activism to a cohesive and unified anti-communist entity was a progressive and subtle evolution. By the time of the anti-communist debates of the early 1950s, Labor's anti-communist activity was governed by the influential Catholic Action and the 'Movement.'⁶³

⁶¹ Robert Murray, *The Split*, pp. 35-37.

⁶² Sean Scalmer, 'Crisis to Crisis: 1950-1966,' p. 91

⁶³ Ralph Gibson, *The Fight Goes On: A Picture of Australia in the World in Two Post-War Decades*, Red Rooster Press: Victoria. 1987. p. 47. The Movement had assisted in having sympathetic and staunchly anti-communist ALP members reach the upper echelons of the Labor Party. With loyal support emanating from such high positions within the Party, the Movement became the dominating force behind much of Labor's anti-communist endeavours. By 1953, the extensive influence of the Movement upon the ALP and Federal Executive was seen in the distinctive shift towards a more aggressive and uncompromising stance against the CPA. It was the beginning of the end for Labor.

The foundations of the emergent Catholic dominance over Labor's anti-communism were laid in the social suffering of the Great Depression.⁶⁴ This was a period in which unemployment was endemic, poverty was rampant and the fragmentation of the Australian population was characterised by an ever widening divide between the classes.⁶⁵ The social dislocation of the Great Depression became a catalyst for the emergence of a politicisation of the Australian people. Catholic anti-communism initially arose within the tight-knit and predominantly working class community of Irish-Australian Catholics.⁶⁶ As a community, the politics of Irish-Australians reflected their working-class roots and heritage as one of the most maligned and impoverished immigrant groups within Australia. Such a working-class heritage also established intensely strong links with the ALP and the trade-union movement.

Combining this Labor heritage with their Catholic values ensured the infusion of a pervasive conservatism that had long been a traditional characteristic of the Catholic Church. This conservatism, built upon a long history of Papal authoritarianism and a general unwillingness on the part of the Vatican to embrace change and adopt directions that challenged the status quo, coloured the relationship that was to emerge between the Catholic right and the radical left that existed within the ranks of the ALP. It helped shape and define the anti-communism which was to emerge in the coming decades.

Yet was the rise of anti-communism within the Catholic factions of the ALP a natural reflection of the rise of far-left radicalism and militant communism? The shifts to the

⁶⁴ Bruce Duncan, *Crusade or Conspiracy: Catholics and the Anti-Communist Struggle in Australia*, UNSW Press: Sydney, 2001. pp. 9-11.

⁶⁵ Brian McKinlay, *Australian Labor History in Documents, Volume 1: The Trade Union Movement*, Collins Dove: Melbourne, 1990. pp. 117-119

⁶⁶ Bruce Duncan, *Crusade or Conspiracy*. p. 10.

peripheries of the political spectrum were an understandable reaction to the disenchantment felt as social conditions spiralled downward throughout the Depression.⁶⁷ People became attracted to the extreme politics of the far-right and left as they sought alternatives to what they saw as the failure of Australia's capitalist system to provide even the most basic of goods and services.⁶⁸ Given the shared Labor experience of these groups, one characteristic that all had in common was a deep affinity with the preservation of social justice and community welfare. Despite such similarities, how each of these factions sought to achieve these aims would be the catalyst for the emergence and propagation of political and social conflict in the coming decades.

For Catholics within the ALP, encouraging their social agenda entailed a reaffirmation of their faith.⁶⁹ This faith found an outlet in Catholic Action. This in turn became the most enduring source of Catholic anti-communism. Whilst the dynamics of its power were greatly altered by the early 1950s, the considerable dominance that this organisation exerted over the ALP's anti-communist activities in the early 1950s was the result of a long and sustained campaign in which Catholic workers combined faith with staunch labour values in order to undermine the CPA. The longevity of Catholic Action can be attributed to the fact that it

⁶⁷ Ross McMullin, *The Light on the Hill*, pp. 158-160. One consequence of the social dislocation being felt by the working classes throughout the Depression was the emergence of new patterns of electoral behaviour. These seemed to indicate that the working class, Labor's primary source of support, had become increasingly restless. This restlessness manifested itself at election time when governments tended to be voted out under the basis that the alternatives could do little worse. It also indicates that the working class became progressively more predisposed to seek alternatives to the traditional politics of the Left and Right. The extreme political peripheries had become more attractive as the Great Depression continued.

⁶⁸ Brian McKinlay, *Australian Labor History in Documents*, pp. 117-118

⁶⁹ Patrick O'Farrell, *The Catholic Church in Australia: A Short History 1788-1967*, Thomas Nelson (Australia) Ltd.: Melbourne. 1972. p. 264

existed with a mandate provided by the Australian archdiocese.⁷⁰ This mandate promoted an agenda of social reconstruction infused with Catholic values and teachings.⁷¹ Despite the appearance of superficial similarities between the aims of industrial, economic and social reforms that both Catholics and communists were promoting, the ideological divide between them was an irrevocable barrier. Where Catholics sought to utilise their faith to motivate and affect change, Communists saw, and advocated, revolution as the means by which to affect the change they sought so much. Conflict was inevitable.

As the Great Depression ended and social and economic conditions began to improve, the conflict between Catholic anti-communists and the CPA grew rapidly more intense. Contributing to this escalation was a number of issues. Foremost was the issue of Australia's economic recovery. Largely dependent on the cooperation of the trade unions, this recovery was seen as an opportunity by the CPA, with its enlarged numbers, to encourage an increased militancy within the trade union movement. By the end of the 1930s, the Spanish Civil War added to the animosity existing between the CPA and the Movement and its Catholic contemporaries.⁷² Stories of bitter warfare and reprehensible atrocities emerged from both sides of this conflict. When hostilities between England and Germany erupted in

⁷⁰ Patrick O'Farrell (ed.), *Documents in Australian Catholic History, Volume 2: 1884-1968*, Geoffrey Chapman: Melbourne, 1969. pp. 369-370.

⁷¹ Tom Truman, *Catholic Action and Politics*, Georgian House: Melbourne. 1960. pp. 62-64. The mandate given to CA viewed the CPA and its agenda as a discernable and very dangerous threat to its own aims within Australia's working classes, thus setting the climate for the prolonged political engagement and conflict that emerged between the two ideologically opposed groups.

⁷² Fay Woodhouse, 'Catholic Action and Anti-Communism: The Spanish Civil War Debate at the University of Melbourne, March 1937,' *Australia's Public Intellectual Forum*, No. 73, 2002. pp. 89-99. The Spanish Civil War can be contextualised in a plethora of ways, one of which being the struggle between communism and Christian civilisation. This perspective on the conflict can provide significant understanding to the rising animosity between Catholics and the CPA just prior to the outbreak of the Second World War.

1939 and the Soviet Union signed the non-aggression treaty with Hitler,⁷³ Catholic anti-communism went into overdrive. The saturating fear arose as to the extent to which domestic communists might go to disrupt a war effort that they saw as 'imperialist'. Yet, Catholic anti-communists did not universally applaud Menzies banning the CPA under the National Security Act.⁷⁴ One group that did, however, was the large body of Catholic workers, whose strong and deep links with trade unions meant that they were wary of the communist hostility towards Australia's continuing war-effort, at least until 1941.

Strong links with the trade unions placed many Catholic workers in direct contact with the Communist-encouraged militancy.⁷⁵ Given the contemporary political climate, the inherent conservatism of the increasingly politicised Catholic community and the deteriorating atmosphere between the communist and Catholic workers, there was an enthusiastic move towards an increasingly venomous form of anti-communism from within the Catholic community. In this environment of untempered hostility operated an organisation of Catholic intellectuals and industrial figures who felt that the anti-communist methods of the prominent Catholic Action were largely ineffectual in heralding real social and industrial changes. This was despite the success of Catholic Action at implementing its social agenda. This hard-line element within the Catholic anti-communist apparatus was intent on seizing the opportunity to take anti-communism in a very uncompromising direction.

By the early 1950s the Catholic Social Studies Movement had asserted itself as the driving force behind much of the anti-communist activity within the Catholic community and

⁷³ J. M. Roberts, *The Penguin History of the World*, Penguin Books: London. 1997. pp. 920-921.

⁷⁴ Bruce Duncan, *Crusade or Conspiracy*. p. 32

⁷⁵ Naomi Turner, *Catholics in Australia: A Social History, Volume 2*, Victoria: Collins Dove, 1992. p. 161.

Australian labour movement. It had entrenched itself within the hierarchy of both Catholic Action and the ALP's own anti-communist industrial cells, the Industrial Groups. Even as the Movement became increasingly dominant, members of Catholic Action remained unsure of its affiliation.⁷⁶ Its integration into the hierarchy of Labor movement meant that the Movement had placed itself in a unique position to shape the ALP's response to the proposed dissolution of the CPA.

It was led by the driven B.A. Santamaria, a political figure with many more detractors than supporters, the Movement saw as its primary responsibility the total removal of the CPA and its influence from Australia's industrial and political environment.⁷⁷ To this end it adopted as its most effective tools, covert and subversive political manoeuvring. Almost ironically, the Movement employed some of the most fundamental tactics utilised by the CPA to achieve its aims. It established a philosophy of engaging communism through the extensive use of small cadres and cells.⁷⁸ It became adept at attaining positions of influence in the trade unions and ALP machinery from where they might most effectively counter the intrusion of communism.

The Movement, with its secretive and clandestine industrial tactics had systematically taken over control, or at least established considerable influence over the ALP's Industrial Groups. However, the Industrial Groups had become an arena in which the prominence of Catholic anti-communism in both in the unions and in the broader Labour Movement had serious

⁷⁶ Naomi Turner, *Catholics in Australia*. p.167

⁷⁷ B.A. Santamaria, *"The Movement" - 1941-60: An Outline*. Campion Press Pty. Ltd.: Melbourne. 1960.

⁷⁸ B. A. Santamaria, *Santamaria – A Memoir*. Melbourne: OUP. 1997. p. 66. By establishing small cells and cadres within specific unions or other realms of the ALP, the Movement recognised the proven effectiveness of communist tactics and capitalised upon them.

political and social ramifications. No longer could the ALP and its Federal Executive exercise authority over these groups. Such a prominence within the ALP's anti-communist apparatus meant that the placation of Catholic sensibilities became an important aspect of how the ALP shaped its policies and responded to tabled legislation. In terms of the Communist Party Dissolution Bill, Labor received considerable pressure from the 'Groupers' to allow passage of the legislation unimpeded.

The nature and enthusiasm of Labor's response to Menzies' legislative proposals in April of 1950 had much to do with the placation of Catholic sensibilities. The conservatism that defined Catholic anti-communism had inherently influenced broader swathes within the ALP. This was demonstrated by a distinct shift to the conservative centre by many of Labor's rank-and-file. Increasing numbers of Labor supporters outside of the Catholic faction began to see in the legislation the kind of measures that they felt would be suited to dealing with the issue of communist subversion. Whilst these supporters did not necessarily identify with the aggressive Catholic faction, they were sympathetic to their agenda and did nothing to impede their rampant anti-communism. The tacit condoning of this spiteful anti-communist activity did a considerable amount of damage to the tenuously united ALP as these debates raged.

Catholics were undoubtedly a significant influence upon the ALP's anti-communist agenda. This influence was evident even within the Federal Executive, where the constant encouragement and endorsement of Industrial Group activities coincided with their takeover

by the Movement.⁷⁹ However, the exertion of this influence by the Movement and its members was not welcomed by all within the ALP. Evatt, Chifley and many other long-serving members of the FPLP saw in this new assertiveness a distinctive threat to the traditional values of the ALP. However, the tenuous unity within the ALP had become largely dependent upon the support that this element was providing. Therefore, given the pervasive hostility of these Catholic anti-communists to the CPA and its affiliates, Evatt's decision to enter into the High Court challenge and lead the 'No' campaign during the subsequent referendum raised a considerable amount of resentment from the right-wings within the Party. This resentment, coupled with the ever growing power and influence of the aggressive Catholic right meant that Evatt faced a large amount antagonism emanating from within the Party. The prominence of these zealously anti-communist Catholic figures added to the resolute opposition Evatt was to encounter. The malicious rhetoric of Catholic anti-communism accompanying this opposition became Evatt's constant companion as the debates progressed.

That Evatt's determination in prevailing throughout these twenty-one months demonstrates a departure of great significance in terms of the relationship which he maintained with civil liberties has been well established in previous chapters. However, the inherently heterogenous Catholic opposition was manifestly more virulent and demonstrated a resentment that was matched by none. The pressure upon Evatt to capitulate to such

⁷⁹ Patrick Weller & Beverley Lloyd (eds.), *Federal Executive Minutes 1915-1955*, pp. 408-483.

Throughout the anti-communist debates, members of the ALP Federal Executive who drew much of their support either directly or indirectly from the conservative anti-communist forces commonly linked with Grouper activity appeared to be determined to extend the already sizable influence of these factions across all aspects of the ALP.

Catholic sensibilities for the sake of Party harmony would have been immense. Yet, his determination to defeat the legislative initiatives remained steadfast.

Had Evatt succumbed to these pressures and returned to the compliant pragmatism that had previously characterised his relationship with civil liberties, the outcome might have been decidedly different. Nevertheless, Evatt understood that there were issues of constitutionality and morality that were at stake. Conversely, Catholic anti-communists did not. For them, the monolithic and menacing presence of communism within any facet of Australian society, particularly within our industries, was a far more pressing issue. The divergent attitudes ensured that there would be a continued animosity between Evatt and the anti-communist Catholic right within Australia. Given the broader deterioration of Party unity, the deep and unrepentant animosity towards Evatt and his efforts from the plethora of Catholic anti-communists was inevitable.

The Press: A Voice of Opposition

When the anti-communist debates erupted into the public arena in early 1950, there was a chorus of discussion and debate about the implications and ramifications of the impending illegality of the CPA. From the local pub to the work-place, almost every one had an opinion regarding what was undoubtedly the most important domestic political issue emerging in the aftermath of the Second World War. The opinions that were formed were largely the result of the information provided by the media, and in particular the print media, to the Australian public. As the most accessible and influential source of information available to the general public,⁸⁰ the print media played a crucial part throughout these debates. Consequently, its responsibilities to the public went well beyond the mere relating of the events as they transpired. It was an integral facet of the public forum.

The focus of this chapter will be in assessing the role that the print media had throughout the anti-communist debates. It will seek to understand why the print media not only reported events, in this case the anti-communist debates, but also how it contributed to the shaping of the public's attitudes towards these issues. These questions will be asked with particular regard to the public's attitude concerning the proposed dissolution of the Communist Party of Australia and Evatt's efforts at combating this initiative. It will examine issues concerning the influence of those who controlled the media and those who understood how to use it for political gain. It will seek to understand the print media in the context of being established commercial entities, with an ownership that had to protect not

⁸⁰ John Henningham, 'The Press', in Stuart Cunningham & Graeme Turner (eds.), *The Media in Australia: Industries, Texts, Audience*, Allen & Unwin: NSW. 1993. p. 59.

only their interests, but the interests of their shareholders. Keeping this in mind, assessing their attitude towards Evatt will expose the extent of opposition that he faced from this quarter.

To appreciate the role that the media had during the early 1950s, we must first understand the nature of the print media generally within Australia. The print media in Australia has traditionally been dominated by a very small number of hugely influential media entrepreneurs. This concentrated ownership means that the Australian press is perhaps the most monopolised in the western world.⁸¹ Given the need to protect such monopolisation, the Australian media is inherently conservative. This was as true in the 1950s as it remains today. This conservatism shaped and influenced the Australian press throughout the anti-communist debates in a profound fashion. It was a conservatism that was widely and profusely demonstrated in editorials and sponsored columns in many of the mainstream newspapers.⁸² However, due to the influence of the media on the pervading attitudes of the Australian public, this conservatism had larger implications throughout these debates. These were implications that affected the fundamental and intrinsic relationship that existed between the press and the public.

⁸¹ Keith Windshuttle, *Fixing the News: Critical Perspectives on the Australian Media*, Cassell Australia: NSW. p.2.

⁸² *The Age*, April 28, 1950. p.8. This is but one editorial which was indicative of the broader community sentiments of the period. Here, the editor is placing the newspaper squarely in a pro-legislative position, though doing so very subtly and without over-dramatising the actual fears associated to the rise of communism. However, the reserved rhetoric of *The Age* and its reporting of the anti-communist debates may have had more to do with its targeted audience, primarily the upper-middle classes whose education and political persuasion were not necessarily best endeared to enthusiastic vitriolic rhetoric; *The Sun*, April 29, 1950. p. 16. This editorial clearly states the position of this publication as one of unequivocal support for Menzies anti-communist proposals. It reiterates Menzies claims and challenges Labor's concerns with much the same rhetoric as the ALPs political opponents.

In the context of the anti-communist debates of the early 1950s, the influence of this conservatism exacerbated and contributed to the deep sense of fear and concern within the Australian consciousness. Given that the press was, and largely remains the most conspicuous and accessible forum for public debate and discussion in Australia, the fears of the period were often manifestly concentrated and exaggerated throughout the pages of the major mainstream publications, especially the popular tabloid papers. These were fears that were often directly related to the domestic political climate, one in which communism and communist subversion were of paramount importance.

The escalating tensions of the early Cold War were all dominating the press throughout the anti-communist debates. From the Berlin Blockade in 1948 to the detonation of the first Soviet atomic weapon only weeks prior to the onset of the anti-communist debates, the almost constant succession of events inevitably contributed to the overriding fears that were shaping many Australian minds. The political elite within Australia recognised these fears. This was especially true of the political right. Capitalising on both the influence and the pervasive conservatism present throughout the print media, they began a concerted effort to use the press as a means of promoting their own political agendas. Through the effective use of a largely supportive and docilely compliant print media, the right-wing political elite became very adept at tailoring their politics to addressing the pervading fears of the period. Testament to such deliberate capitalisation was the effective move on the part of Robert Menzies in the lead up to the 1949 federal election to promise to ban the communist party

and its affiliates if elected.⁸³ Sensing that the broader community was dissatisfied with the progress of the Labor government's anti-communist activity, he decided that a more ubiquitous approach to this issue would win him the election. He was right and it did.

However, these political elites were also capable of actually influencing the media itself, not merely deriving policies from the prevailing social agendas established within the press. Establishing the emergence of a conservative attitude occurs when there is change in the overall balance of liberal and conservative considerations acted upon by the public as a consequence of the information that they have access to.⁸⁴ Conservative politicians did their utmost to ensure that the press was inundated with their rhetoric and agenda, thus making certain that the most prominent policies evident in the mainstream print media were theirs.

Having a conservative agenda pervading the national press throughout the anti-communist debates had an immense impact upon the public's attitude towards the proposals. What such a conservative awareness did was instil in the public a real sense of urgency, that when coupled with their growing fears, contributed significantly to the nature of the response that the population had to these proposals. This response was overwhelmingly enthusiastic and was driven by the fact that the internal and external events occurring around the public were often identifiably the result of some form of communist activity. To this end the compliant

⁸³ David Lowe, *Menzies and the 'Great World Struggle.'* p. 32. By the time the 1949 federal election was announced, Menzies and his colleagues had established a chain of logic that began with a Labor controlled industrial policy and ended in totalitarianism and communism. This chain of logic was effectively used throughout the election campaign to entice the disenfranchised labour movement and general public into supporting a change in government.

⁸⁴ Dennis Chong, 'Creating Common Frames of Reference on Political Issues,' in Diana C. Munz, Paul M. Sniderman & Richard a. Brody (eds.) *Political Persuasion and Attitude Change*, University of Michigan Press: USA. p. 196.

mainstream press was proving eager to find connections between communist activities in Australia and those overseas.⁸⁵

These contributing factors establish a framework around which the nature of the media's response to the anti-communist debates can be examined. From the self-serving conservatism of those that own the media to the ability of the political elite to capitalise upon or influence the pervading fears of the period, the press has a variety of forces shaping its direction. Much of this inevitably impacted upon Evatt and his behaviour throughout the debates. However, whilst the press was indeed overwhelmingly supportive of the measures, it must be noted that there were outlets who felt that the measures were repugnant.

The mainstream print media's responses to Menzies' proposed dissolution of the CPA ranged from restrained contempt to uncritical to delirious enthusiasm. Whereas *The Age* largely remained quietly reserved in its encouragement of the proposed dissolution of the CPA, *The Sun* openly and enthusiastically displayed its support of the proposed dissolution of the Communist Party and remaining hostile and indignant to those with contradictory opinions.⁸⁶ Where a real divergence in attitude emerged was in the pages of such publications as *The Argus*, which displayed open disapproval of the proposals.⁸⁷ Where such differences in tone and perspectives provided by these publications might otherwise have

⁸⁵ David Lowe, *Menzies and the 'Great World Struggle'*, p. 23.

⁸⁶ *The Sun*, April 28, 1950. p. 1. This is but one example of this publication openly endorsing the anti-communist initiatives of the Menzies government. This example deals with published photographs of the eight most prominent union leaders named as members of the CPA by Menzies during the second reading of the Communist Party Dissolution Bill. The tone of this, and other articles this paper published throughout the debates was indicative of the broader animosity that this paper displayed towards the far-Left and communism.

⁸⁷ *The Argus*, May 3, 1950. p.2. Only one week following the second reading of the legislation *The Argus* was already questioning the social and legal implications of the proposals, such as the 'onus of proof' clause. The publication continued to question the legislation right throughout 1950 and 1951.

instigated the rise of some distinct disparity throughout the pervading attitudes amongst each specific audience, this was not to be the case.

The difference in tone and perspective of individual publications was mirroring the domestic politics of the day. Nevertheless, publications still identified with one side of the debate or the other, allowing only the extent of their support to differentiate them. The paradox that existed within this situation was that unlike today, where Australians are generally provided with only two alternative newspapers in each of the major centres, the early 1950s was a period in which existed up to five major newspapers published regularly in each of the capital cities.⁸⁸ Therefore, the presence of such similar agendas pervading such a diverse range of publications appears to have had considerable bearing upon how the public dealt with the anti-communist debates, and more specifically, Evatt and his actions at opposing these enormously popular initiatives.

Another aspect of how the press and the public responded to the proposed dissolution of the CPA was the nature of journalism itself. The Australian media has long enjoyed pretending that it remains an impartial observer of events. That it is devoid of any connection with the events which it reports. However, such has never been the situation. The impartiality of journalists, as much as this is an attractive notion, simply can not be guaranteed. This is especially applicable when journalists are answerable to editors and owners who have considerations beyond the preservation of journalistic integrity.

⁸⁸ The Melbourne press consisted of (but was not limited to) *The Age*, *The Herald*, *The Sun*, *The Catholic Worker*, *The Weekly Times*. The Sydney publications include such titles as *The Sydney Morning Herald*, *The Daily Telegraph*, *Sunday Telegraph*. Coupled with the presence of a number of national publications such as the *Financial Review* and *The Australian* there was a large variety of perspectives available to the Australian public.

Furthermore, journalists, like all members of the general public, subscribe to a set of values and beliefs that define the world around them. It is through these perspectives that a journalist will seek to report events as they occur. To understand how the bias inherent in individual perspectives affects the direction that a story takes it is necessary to understand that a reporter is a person who, whilst perhaps armed with a greater appreciation of the complexities of events, is still fallible and capable of lacking partiality.

Understanding how all of these issues affected Evatt and his activities throughout the twenty-one months of the anti-communist debates is a complex task. Each had a telling impact upon the pressures that Evatt faced throughout the debates. Evatt himself seemed genuinely disinterested in addressing the media during these many months. This was a conspicuous departure from his past relationship with the press.⁸⁹ However, given the widespread support of the proposed measures by much of the mainstream print media, it was an understandable course of action. The entrenched opposition throughout the press manifested itself in open hostility towards Evatt, particularly when he accepted the brief from the Waterside Worker's Federation to challenge the Communist Party Dissolution Act in the High Court.⁹⁰ His resulting indifference to the press was characterised during his High Court challenge by his concentration upon the case and during the 'No' campaign by

⁸⁹ 'Doc' [Videorecording]: A Portrait of H.V. Evatt 1894-1965. Film Australia. 1995. Throughout the 1946 San Francisco peace conference that established the United Nations, Evatt became a favourite of the press due to his propensity to speak very clearly and at great length to the media about what was taking place. He readily provided answers and discussed quite openly, how the conference was progressing.

⁹⁰ *The Sun*, October 26, 1950. pp. 1 & 7. The paper openly chastised Evatt for his decision to accept the brief. However, its criticism was aimed at the apparent failure of Evatt to accept that the measures were established to protect the nation from the use of industrial disruption by the CPA, through its influence in unions such as the WWF. It was a very superficial criticism, despite its venomous tone.

his preference for addressing the public directly in town halls and open rallies.⁹¹ The press, like his political opponents was not differentiating between what was for Evatt, a struggle for the *principle* of an Australian's right to freely associate with whomever they choose, and his apparent affinity with the CPA.⁹² As he loathed the ideology of communism, he found it frustrating to be tarred with the same brush as such a Party. However, in order to achieve his ultimate goal of defeating the proposed measures, he had to accept such misinterpretations of his motives.

Contributing to the persistence in the mainstream press's adherence to its attacks upon Evatt was the fact that the ALP and press were persistently in disagreement.⁹³ This conflict became a serious issue for Evatt throughout the debates. Whereas throughout the High Court challenge Chifley remained the public face of the ALP, by 1951, Evatt was leader of the Party and its most prominent member. Therefore the animosity of the press towards Evatt and his activities was aggravated by the press's distaste of the ALP. These two factors, in addition to the pervasively conservative nature of much of the mainstream print media, did an enormous amount to establish the opposition that emerged from this information medium.

The dynamics of the opposition that came from the press was distinct from that which emerged from such sources as the ALP and Catholic conservatives. Therefore, Evatt's determination to prevail over such publicly conspicuous opposition is testament to how important he felt his course of action was for Australia. As much as Evatt overcoming the

⁹¹ Ken Buckley, Barbara Dale & Wayne Reynolds, *Doc Evatt*. p. 364

⁹² Kylie Tennant, *Evatt*. p. 263

⁹³ *Ibid.* p. 160.

opposition that was emerging from other sources was important, overcoming the opposition that arose from the press was, in a way, an open defiance of the pervading social climate of the era. Defying the pervading public attitude for the sake of that same public was indicative of just how much Evatt feared that the proposed measures, both in 1950 and 1951, posed a threat to the fundamental rights and freedoms that all Australian's were entitled to. Essentially, Evatt sought to protect Australia's civil liberties in spite of the Australian people. That Evatt undertook this course of action in the face of such pressures, pressures that he would have traditionally had an important effect upon the direction of his liberalism, remains indicative of the inconsistencies that this thesis is attempting to address.

Conclusion

The foundations of the historiographical consensus that this thesis has sought to challenge have been built largely upon Evatt's efforts at defeating Menzies anti-communist initiatives throughout 1950 and 1951. While these two years do indeed highlight a libertarian of the highest order, they also expose the paradoxical nature of Evatt's avowed liberalism. This is due in a large part to the fact that the determination of Evatt throughout these debates represents a significant departure from the traditional inconsistencies that characterised his prior relationship with civil liberties. Consequently, this thesis has argued that Evatt was not the staunch civil libertarian that the established literature would assert.

His relationship with civil liberties had wound a winding road up until the anti-communist debates. The deep concern for the welfare of one facet of society which had prompted his first foray into politics was to contrast strikingly with the ruthlessness inherent in the legislative measures he drafted during the 1949 Coal Strike. Responsibilities to parliamentary colleagues, constituents and ministerial portfolios demanded of Evatt a pragmatism that was to become a featured characteristic of his experience with civil liberties prior to 1950. This was a pragmatism that was shaped and influenced by the responsibilities of government and judicial accountability. Essentially, it was a pragmatism born of political necessity. Yet, politics and pragmatism are always comfortable bed-fellows and Evatt was no exception in this regard. Given pressures such as these and the inevitable necessity of a pragmatic approach to political life, perhaps a more accurate description of Evatt might be that of 'pragmatic libertarian'. His relationship with civil liberties prior to 1950 certainly suggests that this is a more accurate appraisal of the realities of Evatt's temperamental liberalism.

Given the inconsistencies that had pervaded such a long political life, were Evatt's efforts throughout the anti-communist debates wholly unexpected? Insofar as he demonstrated a single-minded determination to defeat the proposed dissolution of the CPA, they most certainly were. Whilst it can be argued that such behaviour was the natural response of a well-established civil libertarian, the often conflicting disposition of his liberalism suggests that such was not really the case. Succumbing to the pressures emanating from such quarters as the Industrial Groups, the Movement and the press would have been a more pragmatic and politically beneficial move on Evatt's part. Yet, this he did not do. For in the move to ban the CPA, Evatt understood better than most, the extensive implications that such a move would have. Therefore, in spite of the considerable opposition ranged against him, Evatt was to persevere throughout these tense and trying months.

Given such determination, we can therefore argue that Evatt's behaviour throughout the anti-communist debates exposed an unanticipated contradiction. Traditionally, political expediency would have played a significant part in shaping Evatt's choices prior to the anti-communist debates. Often, this would have meant that Evatt would have set aside his liberalism for the benefit of the political objective. Yet, the anti-communist debates revealed an unrestrained libertarian who was committed to the preservation of civil liberties despite the temperamental standards that coloured this relationship before 1950. Consequently, if we understand and accept the idea that Evatt was not the staunch civil libertarian that the historiographical consensus has established, from where then, did he draw his intensity and commitment throughout these debates?

Evatt drew his commitment and motivation throughout these debates from a faith in the sanctity of the Constitution and the law. If we keep this in mind, then perhaps a more appropriate perspective of Evatt's behaviour during the early 1950's might be achieved. His adherence to the law was second to none. Coupled with his knowledge of the law and the Constitution, this made him a formidable opponent throughout these debates. The anti-communist debates provided Evatt with an arena in which his knowledge of the law, together with his affection for civil liberties was given the opportunity to thrive. As he was no longer burdened with the responsibilities of government, it was an environment in which he was free to undertake a course of action that satisfied his long held affection for the role that civil liberties had within Australia. This was an affection that parliamentary and judicial responsibilities had often inhibited. When allowed to flourish, this was an affection that was capable of shaping a nation. However, we must remain mindful that it was also an affection that Evatt was quite prepared to sacrifice when called upon to do so by the burdens of government. This was demonstrated frequently throughout his time as Attorney-General and Minister for External Affairs.

What this thesis has sought to expose is the contradictory and inconsistent nature of the relationship that Evatt maintained with civil liberties. It has attempted to challenge the established view of Evatt as a staunch civil libertarian by demonstrating that his liberalism was often burdened by the inconsistencies associated with the pragmatism of necessity. Moreover, it has sought to illustrate that in acting with such commitment and perseverance throughout the anti-communist debates, Evatt paradoxically demonstrated a profound inconsistency within the dynamics of this relationship.

Appendix 1

The operative provisions of the Communist Party Dissolution Bill as read to the House of Representatives on the 27 April, 1950 by the Rt. Hon. Robert G. Menzies, Prime Minister of Australia.

- The Bill declares the Australian Communist Party unlawful, dissolves it, and appoints a receiver of its property. If there is any surplus over liabilities, that surplus will be paid into the Commonwealth.
- The Bill deals with affiliated associations or bodies controlled by Communists, though from these bodies are excluded trade unions. We are not going to suggest that a trade union be dissolved because its management committee happens to have a majority of communists on it.
- Where the Governor-General finds a body of that kind and he is satisfied that its continued existence would be prejudicial to the defence or to the execution or maintenance of the Constitution and laws of the Commonwealth he may declare that body unlawful and appoint a receiver of its property.
- The onus of proof is placed upon that body [i.e the declared] to satisfy the court that it is not a body to which this legislation applies.
- The Bill provides that any officers and members of unlawful associations are under penalty of imprisonment to cease their activities as such. They are not to seek any direct or indirect support for any activity in which that association was engaged.
- The Bill disqualifies a declared person from employment under the Commonwealth or a Commonwealth authority.

- The Bill provides that where the Governor-General is satisfied that a person was, after the 10th May 1948, and before the dissolution of an association, a member or officer of it, and any activities of that person are likely to be prejudicial to defence or to the execution of and maintenance of the Constitution or the laws of the Commonwealth, His Excellency may make and publish a declaration accordingly.
- A declared person may not hold office in a declared organisation associated with a key industry.

Appendix 2

Proposed additions to the Constitution of the Commonwealth of Australia as proposed by Referendum on Saturday, 22 September, 1951.

SECTION 51(A).

51(A)

- 1 – The Parliament shall have power to make such laws for the peace, order and good government of the Commonwealth with respect to communists or communism as the Parliament considers necessary or expedient for the defence or security of the Commonwealth or for the execution or maintenance of this Constitution or of the laws of the Commonwealth.
- 2 - In addition to all other powers conferred on the Parliament by this Constitution and without limiting any such power, the Parliament shall have the power –
 - (a) To make a law in the terms of *Communist Party Dissolution Act, 1950* -
 - (i) without alteration; or
 - (ii) with alterations, being alterations with respect to a matter dealt with by that Act or with respect to some other matter with respect to which the Parliament has the power to make laws;
 - (b) to make laws amending the law made under the last preceding paragraph, but so that any such amendment is with respect to a matter dealt with by that law or with respect to which the Parliament has the power to make laws;
 - (c) to repeal a law made under either of the last two preceding paragraphs.

- 3 - In this section, the '*Communist Party Dissolution Act, 1950*' means the proposed law passed by the Senate and the House of Representatives, and assented to by the Governor-General on the twentieth day of October, One thousand nine hundred and fifty, being the proposed law entitled 'An Act to provide for the Dissolution of the Australian Communist Party and of other Communist Organisations, to disqualify Communists from holding certain Offices, and for the purposes connected therewith.

Source: Commonwealth of Australia, Referendum on Constitution Alteration (Powers to Deal with Communists and Communism) 1951, *The Case For and Against*, August 10, 1951.

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