

SIR JOHN LATHAM

By ZELMAN COWEN*

Sir John Latham was a Melbourne University man in the fullest sense. He had been a student here with a distinguished record of scholarship. Later he was a University lecturer in Logic, Philosophy and Law. From 1939 to 1941, while he was Chief Justice of the High Court, he served as Chancellor of the University. In his retirement, if that absurd word is apt to describe his condition after he had stepped down from the office of Chief Justice, he often came to the University. Successive editorial boards of this Review met him, listened to him, and enjoyed him at the Annual Law Review Dinners. Each year when the Editor of the Review came to see me to settle the guest list for the Dinner one name had already been written in: Sir John Latham. He was the well loved fixture.

When I first came to the Melbourne University Law School as an undergraduate in 1936, Sir John Latham was already Chief Justice of the High Court. In those days there were few occasions on which an undergraduate met with a man so eminent, and he seemed to me a remote and awesome figure. I did not come to know him until after my return to Australia from England in 1951. He was then about to retire from the office of Chief Justice, and in the years that followed I saw him often and in many places. He loaded himself with a mountain of diverse activities, and he would often list for me with great relish the boards and meetings he had attended, and the travels he had just undertaken or was about to undertake.

This is not the occasion to attempt a careful estimate of his place in the law, though I hope that that will be done on due occasion. He was a successful and eminent barrister and an able and strong Attorney-General of the Commonwealth of Australia. As Chief Justice, he was accounted a capable and fair-minded administrator of his Court. In his judicial work, in dealing with constitutional questions, he was at pains to insist that his task was distinctively legal and that political considerations and influences were not relevant. Nevertheless, he brought to his work on the court a background of political experience which had become unusual on the High Court. Overall, his judgments supported a broad view of Commonwealth power as was disclosed by his interpretations of the defence, industrial, external affairs and financial powers of the

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Commonwealth. In the context of defence, this was perhaps most strikingly illustrated by his elaborate dissent in the *Communist Party Dissolution Case*.

He showed little sympathy for the 'revived' doctrine of inter-governmental immunities within a federal system, though his own resolution of the problems posed in the *State Banking Case* was not persuasive. His interpretation of section 92, as evidenced by his judgment in the *Bank Nationalization Case*, would have imposed less restraint upon the Commonwealth than did the interpretation of the section adopted by other members of the High Court.

His judicial contributions to private law and to fields of law other than constitutional law must also await more careful and detailed evaluation. I think that it is fair to say that his approach to such problems was fair, practical, workmanlike and very thorough, but that these were not fields in which he made an outstanding contribution to the law.

Sir John Latham once said that when he died, section 92 would be found engraved on his heart. Yet I suspect that it was politics and affairs rather than the law that lay deepest to his heart. After his retirement from the Bench he retained many legal associations and wrote papers and articles on matters of law and particularly on constitutional law and constitutional reform, but his mind and talk went back again and again to his political days. So many times I have heard him begin a sentence with the words 'When I was Attorney-General. . . .' He often told of his relations with J. A. Lyons, and of his—Latham's—decision that Lyons rather than he should be leader of the party and Prime Minister. One may guess that there was some regret in the retrospect. Many of his stories were about the political days, and there were few about his days on the Court. He sometimes said that it was improper for a former Chief Justice to talk about his Court, or at any rate about the *personalities* of his Court, but I suspect that his reasons for looking back beyond the Court to the political days went deeper. I once taxed him with this and asked him which phase of his career he had most enjoyed. He answered carefully and quite unequivocally that he looked back with most pleasure to his political life.

Some found him formal, austere and somewhat cold. In the days when I came to know him, this was certainly not my experience. As I remember him, he was full of zest for a hundred activities and a hundred causes; in love with the life that made him the chairman or the figure of authority or the distinguished guest. I would banter with him about all manner of things, and he took it in very good part. He returned blow for blow, and, I suspect, rather enjoyed it, as he seemed to enjoy practically everything in which he was

involved. In those years I came to love this extraordinarily vigorous old man. He lived a long and a full and a successful life, though it was touched with personal tragedy in the premature loss of a brilliant son.

He gave a notable example of great and diverse public service. He taught us how very old age can be irradiated by an extraordinary zest and vigour.

We are all the poorer for his passing.