

## **SIR OWEN DIXON: AN INTELLECTUAL MAN OF PASSION\***

BY PETER RYAN\*\*

*Do we think less of a man because he tried to defer his own hanging?*

The tone of the question suggests Doctor Johnson himself, but it was asked by the late Sir Owen Dixon, leaning back in his chair in the Chief Justice's chambers, when the High Court's home was still the bare old building in Little Bourke Street. It was 17 December 1962, just after the series of bitter, near-unbelievable court battles which convulsed Victoria under the general label of 'The Tait Case'.

The less we remember of the man Tait, the cleaner our minds. He was a sadistic psychopath who murdered most horribly a feeble old lady. Last year, aged 60, he died after 23 years in gaol. He enjoyed — if that is the word — the distinction of being Victoria's longest-serving prisoner.

What has this human dreg to do with that most cerebral of all the judges who have presided over the supreme tribunal of the Australian Commonwealth? Much. As the learned and the eminent pay their warm centenary tributes to the memory of Sir Owen Dixon, it is odd that few mention Tait's case. It occupied the High Court for a total of only about 160 minutes, yet it reveals the passion of Owen Dixon better than celebrated constitutional wrangles that lasted weeks.

To Dixon's court, Tait took this question: 'May a man under sentence of death be hanged lawfully while he might still have the right to be heard in court?'

Tait already had been five times before the Victorian Supreme Court — delays which irritated the government of Mr. Bolte. Its Cabinet set a sudden, early date for Tait's execution, even while Mr. Justice Dean was considering the question of a respite. Though the judge grumbled about 'embarrassment', he nevertheless continued to sit until, late at night, he found against Tait.

Next morning, Sir Owen Dixon presided at the urgently called application to the High Court. His four brother judges said virtually nothing — nor had any need to speak.

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Tait's counsel, John Starke, QC, said it might seem they had been 'bundled through . . . to keep an appointment with the hangman at 8 o'clock tomorrow morning'. Dixon's chilly voice assured him that 'he could take it for granted' there would be calm argument and opportunity for reflection; his court would 'preserve any subject-matter, human or not, pending a decision'. Dixon told me afterwards that he had no idea Tait's grave had already been dug at Pentridge.

The court granted Tait's application for an adjournment — 'entirely', said Dixon from the bench, 'so that the authority of this court may be maintained'. The Victorian Government commuted Tait's sentence, but the sound of teeth gnashing in Spring Street was not imaginary.

Tait's celebrated case was anatomised for the public in a book by political scientist Creighton Burns, who wished to include as an appendix the full transcript of the High Court hearing. But could Crown copyright permission be obtained quickly? And how to get a *correct* transcript, the typed official version being patently corrupt?

'Try Owen Dixon,' advised Sir John Barry, a Victorian judge who had watched with alarm the recent actions of his judicial brothers.

Dixon, by reputation, was aloof, but within 30 minutes of a slightly nervous phone inquiry I was seated in his chambers, there to remain for most of that day.

He commended the idea of a book, agreed to get Crown approval to reprint the transcript and then (metaphorically only, of course) got down to shirtsleeves over the text, playing and replaying the tape recordings until no error remained.

'What's this? What's this?' he snapped, pointing at the two mysterious typed words: 'Causa complit'. 'I supposed it to be a technical legal term, Sir Owen.' 'Technical legal rubbish! It's my voice, too!'

More — and yet more — replaying of the tape; then the snow-white head thrown back in harsh cackling laughter: 'Court of Common Pleas! Court of Common Pleas! Obvious!'

Lunch? Visions of the Melbourne Club vanished as his tipstaff brought sandwich and fruit cake. Dixon poured tea; work went on.

This stupendous man was then about 75. The occasional appearance of drowsiness was deceptive. A sudden magnifying glass would flash from vest pocket: 'It's all right — it is a full stop. It looked like a comma.'

Transcript finished, he sat back and talked. His barrister father had been admitted on the day Sir Redmond Barry sentenced Ned Kelly. Dixon senior had seen the black cap put on.

Deafness ruined his father's career. 'I was brought up in a deaf man's house, which was not easy'.

Owen Dixon had, years earlier, been offered a Victorian Supreme Court judgeship, and had declined because he had no taste for the criminal law — 'yet after all these years it has caught up with me here'.

He spoke with anger, direct and unconcealed, at the behaviour of the Victorian judges in Tait's affair. They had let themselves 'be harried and bullied by state politicians'; they had compromised their court's independence of the executive government. On Sir Arthur Dean he was especially harsh: 'Dean bleating about his embarrassment! Dean should have been embarrassing the Premier!'

I ventured a liberty: 'Sir Owen, I think you would quite have enjoyed putting Mr Bolte's Cabinet in jail, if they had defied you, and went on with Tait's execution' Prolonged cackling. 'I'll admit, while the court was sitting, thoughts did turn to Sir John Madden, C.J., who threatened Premier Watt with jail!'

Many who knew Sir Owen well may be surprised at his helping into print a lay publication about a legal matter; Tait's was by no means the only occasion. In his retirement, for example, he advised on a little book, 'The Beamish Case', over a possible miscarriage of justice in a Western Australian homicide case.

Owen Dixon was not a chilly, withdrawn jurist. He was a man of passion — for justice and for the rule of the law. Passions are no less passions because they are intellectual.