



## Six great advocates

By Kylie Day

At the swearing in of Fullerton J in the Supreme Court of New South Wales earlier this year, Michael Slattery QC referred to the extravagant compliment paid by Sir Patrick Hastings KC, the great English advocate of the 1920s, to friend and fellow advocate Norman Birkett. Hastings is reported to have said of Birkett:

... if it had ever been my lot to decide to cut up a lady into small pieces and put her in an unwanted suitcase, I should without hesitation have placed my future in Norman Birkett's hands. He would have satisfied the jury (a) that I was not there, (b) that I had not cut up the lady and (c) that if I had she had thoroughly deserved it anyway.

That memorable anecdote sent this young barrister off to find out more about Norman Birkett and his powers of persuasion. H Montgomery Hyde's *Life of Lord Birkett of Ulverston* was patiently awaiting the day of its discovery in a secondhand bookshop in Beechworth, Victoria. In time, that book also revealed his Lordship's authorship of *Six Great Advocates* (Penguin Books Ltd, London, 1961). After some further searching, a near-pristine and never-read copy of *Six Great Advocates* winged its way to me from Dartford, England, thanks to the wonders of the Internet for finding books out of print ([www.abebooks.com](http://www.abebooks.com)).

*Six Great Advocates* is a small gem of a book containing seven broadcast talks given by Lord Birkett on BBC radio, for half an hour on Sunday evenings in April and May 1961. Seven broadcast talks, but six great advocates? Yes, because Lord Birkett wound up the series with a general talk on advocacy, which is also published in the book. The 'six great advocates' subjected to his scrutiny, and sometime personal reminiscence, are Marshall Hall KC, Patrick Hastings KC, Edward Clarke KC, Rufus Isaacs KC, Charles Russell QC, and Thomas Erskine. Together, they cover the period from the late 1700s to about 1950. Like me, you've probably heard learned friends wax lyrical about one or more of this stellar number. If you want to know more about some or all of them, this book may be for you.



In short, the book is a delight. It is a quick afternoon's read, and Lord Birkett's style is engaging and easy. There are a number of things that I particularly like about *Six Great Advocates*. One is Lord Birkett's gift for making these advocates of a bygone era come to life. The reader gets very close to the experience of seeing and hearing them in action in the courtroom, because of Lord Birkett's powers of description and attention to detail. No doubt the reality is heightened because he knew a number of them personally. It helps that he was briefed on the other side in some of the cases from which he plucks moments. Lord Birkett also understood well the difference between the written word, and the moment of the spoken word in the atmosphere of the courtroom. By observation and description, he endeavours to bridge the gap between the two.

A second thing that I particularly like about the book is that Lord Birkett gives the reader a sense not only of the genius, but also the limitations, of his six subjects, with frankness and balance, but absent cruelty or malice. For example, Lord Birkett wrote of Marshall Hall:<sup>1</sup>

He was one of the greatest of advocates when he was at his best.

I make this important qualification because it is necessary to make it. It is not enough to say that Marshall Hall was an erratic genius; he was certainly that; but there were times and occasions when genius was simply not there. ... He was the strangest mixture of perfections and imperfections that I ever knew at the Bar. ... In the Russell divorce suit in 1923, Sir Douglas Hogg, the Attorney General, was asked to suggest the name of counsel to conduct the case. Sir Douglas and Sir John Simon had both failed in the previous trial, and were not now available for the rehearing. Sir Douglas said, 'There's only one man at the Bar who might pull it off for you. He might win you a brilliant victory or he might make a terrible mess of it; but I believe that he's the only man who can do it – get Marshall Hall.' And Marshall did pull it off in the most brilliant fashion. But this saying of Sir Douglas Hogg is the wise and experienced comment of a great friend, and expresses very clearly the strange mixture of which the genius of Marshall Hall was compounded.

A third matter of significant interest is how very different the 'six great advocates' appear to have been in style. They were not all dramatic and passionate jury advocates, in the style of Marshall Hall. Far from it. For example, Lord Birkett had this to say about Patrick Hastings KC, whose practice was almost wholly before civil juries in divorce, libel and fraud cases:<sup>2</sup>

He could be very contemptuous of passionate appeals made to juries by advocates like Marshall Hall. 'Bombast' and 'humbug' were the words he would apply in private and, if necessity warranted, in public too. ... He well knew his limitations, and he knew where his strength lay. He knew that the modes of speech in advocacy are of various kinds, and each one of them can be effective in the hands of the right [advocate]. Hastings had a very powerful kind of his own. He was a master of simple, direct, forcible speech

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without any embellishments or ornamentation. He also knew the immense value of concise speech linked with brevity; and some of his speeches, without any attempt at literary grace or adornment, were as effective as anything I ever heard from more dramatic or picturesque orators. ... the great quality of Hastings as an advocate was his power of cross-examination. He was without doubt the greatest cross-examiner I ever heard or saw. ... the cool and calm advocate, disdaining the forensic arts while brilliantly employing them. He captured the jury and the judge by an appeal to the head more than the heart and above all by the manner of presentation.

A fourth matter of interest was what Lord Birkett had to say, against the conventional wisdom, on the issue of the age at which it is advisable to come to the Bar:<sup>3</sup>

To be called to the Bar later than most men is not the great disadvantage it is sometimes said to be. On the contrary, men with a little experience of life, such as Rufus Isaacs at twenty-seven and Douglas Hogg at thirty, have shown conclusively what an advantage a little training of the right kind can be. Although Rufus Isaacs was without public-school or university experience, he knew something of commerce, and with his natural aptitude for figures he made headway at once. Most men spend long years in county courts and magistrates' courts, at Sessions and Assizes in the country, slowly building up their practice; but Rufus Isaacs rarely left London and after the first five years his practice was almost entirely in the High Court.

So at least one of the 'six great advocates' was a latecomer to the Bar according to the conventional wisdom of the day. Lord Birkett's observations may be an encouragement for many of today's newcomers to the Bar.

On advocacy more generally, and with some considerable justification based on his case studies of excellence, Lord Birkett expressed the view that:<sup>4</sup>

There are no fixed and unalterable standards of advocacy. It is impossible to point to a John Simon or a Marshall Hall and to say: There is the pattern. Lord Rosebery once catalogued some of the qualities which made Lord Chatham the greatest orator of his age, and when he had set them all out – the right choice of words, the elegance of the sentences, the poetical imagination, the passion, the mordant wit, the great dramatical skill – he added these impressive words: 'A clever fellow who had mastered all these things would produce but a pale reflection of the original. It is not merely the thing that is said but the man [or woman] who says it that counts, the character which breathes through the sentences.' So it was with Marshall at his best. He could never be imitated.

Lord Birkett considered that, as the status of the advocate had changed (being usurped in public life by the celebrity of the television and film star), and the jury had virtually disappeared from civil cases, so too the style of advocacy had changed.<sup>5</sup> To attempt jury-style eloquence before a judge alone would be 'slightly ridiculous'.<sup>6</sup> And advocacy in the Courts of Chancery was perhaps always of a different kind.<sup>7</sup> It was Birkett's view that an advocate ought to be judged by the standards of the age in which he or she lived and worked, saying:<sup>8</sup>

It is foolish, and a little ungracious, to compare the advocates of one age with those of another, for the great advocate is the product of the age in which he happens to live and work.

That seems to reflect both his wisdom, and his generosity. Nevertheless, there is much to be learned from Lord Birkett's observations of advocates from age to age. And the beauty of this book is that he takes us hand-in-hand to meet them.

#### Endnotes

1. At 9-10.
2. At 23-25, 36.
3. At 56.
4. At 20-21.
5. At 9, 25.
6. At 25.
7. At 107-108.
8. At 39.