

BOOK REVIEW
THE TYRANNICIDE BRIEF
By Geoffrey Robertson

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A history teacher recently explained to me why many school students cannot warm to Australian history. It was, he said, because of the lack of blood and gore. Nothing like a civil war, revolution and an execution or two to get young minds excited about history.

That is what Geoffrey Robertson has now offered: a book concerning the war that broke out in England between Charles I and the Parliamentary Army. The revolution that led an exasperated House of Commons to put the king on trial. And the trials that followed, of Charles in 1649 and of the king's killers in 1660.

Midway through the book, after Charles has been tried and condemned by the Parliamentary Commissioners, Robertson describes clinically the monarch's death from a single blow of the axe that temporarily ended the English monarchy. At the end of the book, he tells, in gory detail, the story of the execution and death of John Cooke -

the Gray's Inn barrister who prosecuted the king. Hanging, drawing and quartering was a horrible process. Even by European standards, the English were most imaginative in the business of punishment. We are spared no detail.

This book grew out of a commentary the author offered on a lecture this reviewer gave in London on the defects of the king's trial. He was intrigued as to why Cooke was not celebrated as one of England's most famous advocates. At first, Robertson was inclined to ascribe this to the truth that, in any great historical cause, victors tend to put their spin on history. But as he dug deeper, Robertson saw qualities in Cooke that deserved a biography. The result is readable and a tale definitely worth telling. It is relevant for Australians. It recounts the beginnings of limited government in English speaking countries. According to Robertson, the trial of King Charles was the forerunner to the modern efforts to make tyrannical rulers accountable to the people they have oppressed: from Goering, Milosovic and Pinochet to Saddam Hussein.

When King Charles was captured in 1648 and brought back to London under guard, most of the judges and leading barristers fled to the countryside. They feared involvement in any prosecution of the wayward king. But not John Cooke. When a parliamentary messenger brought him the brief, he declared that he would wait for God's instruction before accepting it. But take it he quickly did. He was to be junior to the Attorney-General, William Steele. But when Steele opted

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out, Cooke enthusiastically took over. Geoffrey Robertson portrays this as the first case of a barrister acting for clients, whatever his private beliefs or wishes. This is dubious. For Cooke this was a famous brief. The parliamentary forces were all powerful. The prospects of royal restoration were tiny. The risks were tolerably small. And God had told him to do the job.

Robertson rejects criticisms of Charles' trial. He points out that a trial was a concession to the already strong English tradition of due process. He demonstrates that, there were features of the trial that extended courtesies and rights to Charles greater than those extended to most prisoners facing charges of treason at that time.

However, the trial of the king had some of the defects now raised against the military commissions in the United States that will try Guantanamo prisoner David Hicks. The prisoner was tried, in effect, for a crime retrospectively invented and imposed on him. The "court" that tried him was hand-picked. The military stood guard at every moment, symbolising where the real power lay. The tribunal was not a regular court of even one established by Parliament for, in Charles' case, the House of Lords was ignored. The prisoner was denied an effective presumption of innocence. His contest as to the legitimacy of trying him was rejected with contempt. Certainly, by modern human rights standards, the trial of King Charles was a shabby affair.

For all this, the royal trial sent a signal that changed British history forever. It signalled the acceptance of monarchy only on terms that respected the people's basic rights. A Bill of Rights followed in 1688 which was a modern compact with authority. Its symbolism has been played out in history ever since: although in Australia, it still awaits the final chapter.

During the Cromwellian republic, Cooke was a pamphleteer of great energy. He was also a forward looking lawyer. He urged the abolition of the death penalty for all crimes except murder and treason. He wanted an end to imprisonment for debt. He advocated legal aid and counselled his fellow lawyers to accept briefs without fee in worthy cases. He urged legal limitations on lawyers' charges. When Cromwell took his fierce troops to Ireland, the one kindly act he performed there was to appoint John Cooke as chief justice. It was from Ireland that Cooke was dragged back to the Old Bailey for the trial, described in this book, that led to his brutal execution.

A reader will come away from *Tyrannicide Brief* with a greater understanding of the motivation of this puritan lawyer and his friends. Cooke was thrust forward and took the biggest brief of his life. He played his role on the stage of English history. He did what his brief, his religious convictions and divine instruction told him to do. It is wrong to suggest, as the author does, that Cooke was a faultless victim of the restored monarch's frenzy of violence. By the standards of the time, Charles II contained the vengeance against the regicides. But John

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Cooke, whose prosecution had resulted in the death of a king, had to pay with his life. King and prosecutor knew that they were engaged in a mighty tussle. This was no ordinary brief. One can deplore the cruelty of Cooke's execution and of all others. But in the mood of 1660 it was inevitable, and Cooke, ultimately knew and understood this.

Cooke and Charles emerge from this book as brave men. They were fighting for their respective causes. In the result, it is Cooke's cause, of limited executive power, that won the battle for the imagination of history. To this extent, Geoffrey Robertson has done a service by rescuing the prosecutor of 1649 from obscurity and doing so in this splendid, well illustrated and beautifully produced book. If Cooke is not entitled to all of the praise that is heaped upon him, his role in history is worth remembering. And it is told in this book with Geoffrey Robertson's flair and advocate's passion.