

# The Right Honourable Sir Owen Dixon OM, GCMG, QC

(b. 28.4.1886 d. 7.7.1972) (Chief Justice from 1952-1964)



*As Chief Justice, Dixon defended the integrity and independence of the High Court with vigour. He staunchly opposed suggestions that it should move to Canberra. Indeed, he opposed the Court having a permanent seat anywhere because he thought it should not be removed from the people, the judges or the legal profession; he considered that it should be 'an all-Australian Court, going to the people rather than requiring the people to come to it'.*

By Grant Anderson and Daryl Dawson

Owen Dixon was born in Melbourne in 1886. Both of his parents were born in England and his father was a barrister and solicitor. Dixon attended Hawthorn College and then the University of Melbourne when he obtained a BA in 1906, an LLB in 1908 and an MA in 1909.

He was admitted to the Bar in 1910, but struggled in his early years of practice. Dixon was appointed as King's Counsel in 1922 and became a leader of the Victorian Bar. He was acknowledged as an outstanding lawyer and a great advocate. He



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appeared frequently in the High Court on both constitutional and non-constitutional matters, where it was said that he had the ability to pit one Justice against another before finally persuading a majority in his favour. He appeared in the High Court on no less than 175 occasions.

In 1926 Dixon served in a non-permanent post as acting Judge of the Supreme Court of Victoria and was appointed to the High Court in 1929. He was 42 and at the time he was the youngest member of the bench. At this point in time the relationship between the Justices of the High Court was somewhat acrimonious, and by his own admission, Dixon found the work "hard and unrewarding". During WWII Dixon was involved in extrajudicial activities which included the chairing of many committees and boards. He also accepted a position as Australian Minister in Washington in 1942, where he was able to use his influence to ensure that Australia's interests in the Pacific were not neglected. On his return to Australia in 1944 he resumed his duties in the Court. In 1950 Dixon was appointed to the UN to mediate a dispute between India and Pakistan, returning to the bench later in that year.

Dixon's approach to the law was consistent with the common law method, where precedent is paramount. He famously stated that there was "no other safe guide to judicial decisions in great conflicts than a strict and complete legalism". However, he held that the Court was not compelled to follow decisions that were manifestly incorrect and lead the break with tradition in automatically following decisions of the British House of Lords. As a principled Justice, he never avoided a decision which reason or principle required. This was demonstrated in the Communist Party case in 1951 where, even as an anti-communist, he decided with the majority of the bench that the Communist Party Dissolution Act was invalid.

Dixon was appointed to the Privy Council in 1951 and then as Chief Justice in 1952. He was 66 and held the position for twelve years. Many regarded him as the greatest judicial lawyer in the English speaking world. He retired from the High Court in 1964, having been on the Court for 35 years.

Dixon died at home in Hawthorn in 1972. On his death, Chief Justice Barwick described him as “a man of exceptional talents and of superb intellectual capacity and attainment. He had a deep, penetrating and precise knowledge of the law through its entire gamut ... to this knowledge, he added great industry and unsparing effort in the pursuit of truth.”

## Chief Justice Dixon’s quotes in constitutional decisions that encapsulate the vision of him as Chief Justice

1. Prior to becoming Chief Justice, Dixon J stated in *Australian Communist Party v Commonwealth* [1951] HCA 5; 83 CLR 1 that (at 193):

*[I]t is government under the Constitution and that is an instrument framed in accordance with many traditional conceptions, to some of which it gives effect, as, for example, in separating the judicial power from other functions of government, others of which are simply assumed. Among these I think that it may fairly be said that the rule of law forms an assumption.*

(Principle: the rule of law)

2. In the same case, his Honour also stated (at 187):

*History and not only ancient history, shows that in countries where democratic institutions have been unconstitutionally superseded, it has been done not seldom by those holding the executive power. Forms of government may need protection from dangers likely to arise from within the institutions to be protected.*

3. In *West v Commissioner of Taxation (NSW)* [1937] HCA 26; 56 CLR 657, Dixon J made the following remarks in respect of constitutional implications (at 681-2):

*Since the Engineers’ Case, a notion seems to have gained currency that in interpreting the Constitution no implications can be made. Such a method of construction would defeat the intention of any instrument, but of all instruments a written constitution seems the last to which it could be applied. I do not think that the judgment of the majority of the Court in the Engineers’ Case meant to propound such a doctrine.*

4. Later in *Australian National Airways Pty Ltd v Commonwealth* [1945] HCA 41; 71 CLR 29, Dixon J similarly stated (at 81, 85):

*it is a Constitution we are interpreting, an instrument of government meant to ensure and conferring powers expressed in general propositions wide enough to be capable of flexible application to changing circumstances*

...

...

*We should avoid pedantic and narrow constructions in dealing with an instrument of government and I do not see why we should be fearful about making implications.*

5. In *Bank of NSW v Commonwealth* [1948] HCA 7; 76 CLR 1, Dixon J described the operation of the Constitution as follows (at 363):

*The Constitution sweeps aside the difficulties which might be thought to arise in a federation from the traditional distinction between, on the one hand the position of the Sovereign as the representative of the State in a monarchy, and the other hand the State as a legal person in other forms of government ... and goes directly to the conceptions of ordinary life... From beginning to end it treats the Commonwealth and the States as organizations or institutions of government possessing distinct individualities. Formally they may not be juristic persons, but they are conceived as politically organized bodies having mutual legal relations and amenable to the jurisdiction of courts upon which the responsibility of enforcing the Constitution rests.*

