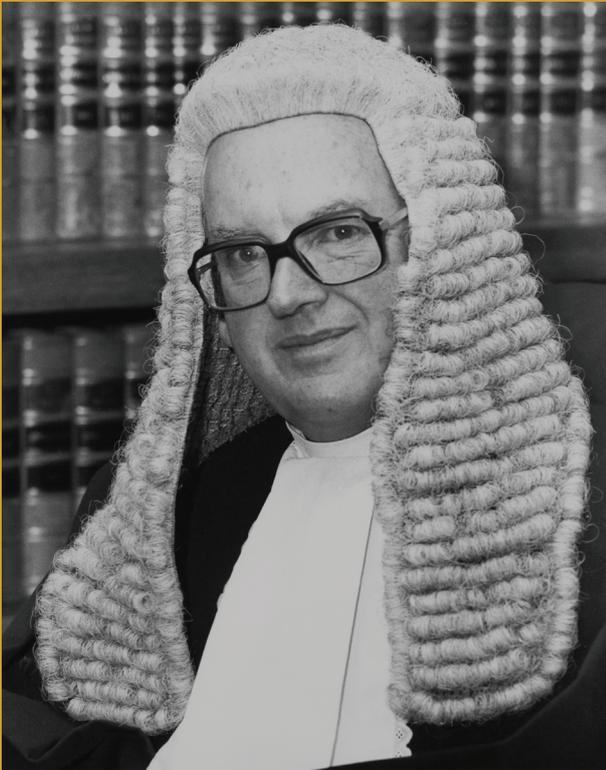


The Right Honourable Sir Harry Gibbs GCMG, AC, KBE, QC



AUSTRALIAN
CONSTITUTION
CENTRE

(b. 7.2.1917 d. 25.6.2005) (Chief Justice from
1981-1987)



Much is made of Sir Harry Gibbs' conservatism as a person, lawyer and judge. It is true that he was defensive of legal precedent. In the classification of lawyers according to Lord Denning's labels as "timorous souls" and "bold spirits", Sir Harry Gibbs would have proudly rejected the category of "bold spirit". In his view of the world, it was for Parliament, and elected politicians, to be bold. Judges had a more modest function. He adhered to this view, despite much evidence of parliamentary neglect of large areas of the law and of oversight of human rights infractions.

By Michael Kirby

Born in 1917, Harry Gibbs was the eldest son of a solicitor that practiced in Ipswich, Queensland. He excelled at school and went on to study at the University of Queensland and graduated with a BA in 1937 and an LLB in 1939, being one of the first to ever receive first class honours from that university. Gibbs was admitted to the Queensland Bar in the same year and served in the Australian Imperial Forces in New Guinea from 1942 to 1945. He was appointed QC after the war in 1957, while

also lecturing at the University of Queensland. He appeared in the High Court on no less than 28 occasions. In 1961 Gibbs became a judge of the Supreme Court of Queensland at the young age of 44. In 1967, he was appointed to the Federal Court of Bankruptcy, in 1970 he was appointed to the High Court and in 1972 he was appointed to the Privy Council.

During his early years as a Justice of the High Court there was a high turnover of Justices and, after only six years, he was the most senior Justice below the Chief Justice.

Gibbs was appointed as Chief Justice in 1981 upon the retirement of Garfield Barwick. In many ways, it was a tumultuous time for the Court and, as Chief Justice Gleeson later observed, Gibbs' *"diplomatic skills were tested on several occasions."* It was also a period in which governments were seeking to test the outer limits of Federal power, perhaps most notably, through the use of the external affairs power in Section 51(xxix) of the Constitution. This power was relied on by the government to pass the *Racial Discrimination Act*, and to stop the damming of the Franklin River in Tasmania, both of which were upheld by the Court. Gibbs found himself in the minority in these decisions and Chief Justice Gleeson observed that Gibbs' *"inclination as a federalist was unsympathetic"* to some of this legislative activity.

Gibbs was the first Chief Justice to retire after the successful 1977 Constitution Alteration (Retirement of Judges) referendum. He retired from the Court at the mandatory requirement age of 70 in 1987. After retirement, he was still heavily involved in public life, including as the President of the Kiribati Court of Appeal and Chairman of the Tax Research Foundation. Gibbs died in 2005 at the age of 88. He forbade a State funeral, however, following his death a State Memorial Service was held.

Chief Justice Gibbs' quotes in constitutional decisions that encapsulate the vision of him as Chief Justice

1. In *Brown v R* [1986] HCA 11; 160 CLR 171, Gibbs CJ (dissenting) stated at 183 that:

It is trite but true to say that the Constitution was framed to endure and to be capable of application to changing circumstances which the framers of the Constitution could not be expected to foresee, and it would be contrary to all principle to confine the operation of any of its provisions to matters known to exist in 1901.

(Principle: nationhood)

2. In holding that the Commonwealth and States could jointly create a Coal Industry Tribunal, Gibbs CJ stated in *Queen v Duncan; Ex parte Australian Iron and Steel Pty Ltd* [1983] HCA 29; 158 CLR 535 that (at 553):

There is no express provision in the Constitution, and no principle of constitutional law, that would prevent the Commonwealth and the States from acting in cooperation, so that each, acting in its own field, supplies the deficiencies in the power of the other, and so that together they may achieve, subject to such limitations as those provided by s. 92 of the Constitution, a uniform and complete legislative scheme.

(section 92)

3. Sir Harry Gibbs later wrote that:

[I]n a democracy, every educated citizen should have an understanding of the role of the judiciary, the manner in which the courts function and the history of the relationship between the courts and other organs of government. This is particularly important because (except in so far as the Constitution places federal judges, and particularly the High Court, in a special position) the independence and authority of the judiciary, upon which the maintenance of a just and free society so largely depends, in the end has no more secure protection than the strength of the judges themselves and the support and confidence of the public.

(Principle: democracy)

