

Emmanuel College **Papers**

**The Gibbs Imprint at the Queen
Elizabeth II Courts of Law**

by

The Hon Justice Paul de Jersey AC

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Emmanuel College
The University of Queensland
Enriching lives since 1911

Emmanuel College is Australia's ninth, and with St John's College, The University of Queensland's first residential college to gain affiliation. It was founded by the Presbyterian Church of Queensland in 1911 with the first students taking up residence in Wickham Terrace in 1912. As the Presbyterian Church moved towards partnership with other religious denominations during the 1970s, Emmanuel College also came under the auspices of the Uniting Church. Upon its inauguration, Emmanuel College was an all male residence but this changed in 1975 when women were admitted as collegians. Now, the College numbers around 340 students with half our population being female.

Further change was experienced by the College when it moved in 1956 from its original site in Wickham Terrace to its present location on the main university campus in St Lucia.

Since 1911, Emmanuel has stood for excellence in all round education and has had seven Rhodes Scholars during its history. Its graduates have gone on to make a major contribution to Australia in many areas, including as doctors, scientists, teachers, engineers, lawyers and judges, politicians, ambassadors and diplomats, and church leaders.

THE AUTHOR

The Hon Justice Paul de Jersey AC

The Hon Justice Paul de Jersey AC was educated at Church of England Grammar School (1961-1965) and then The University of Queensland where he graduated with a BA (1969) and LLB (Hons) 1971; and Queensland University Regiment 1966-71 (Commissioned 1969). He was called to the Bar (Queensland) in 1971 and appointed Her Majesty's Counsel in 1981.

At the Bar, he had a broad general practice with a focus on the commercial field; he appeared in constitutional cases before the High Court of Australia and before the Judicial Committee of the Privy Council.

He was appointed a Judge of the Supreme Court of Queensland in 1985; Commercial Causes Judge 1986-1989; Chairman, Supreme Court Library Committee 1988-1994; Chairman, Attorney-General's Consultative Committee on Computerised Legal Information Retrieval 1990-1991; Judge constituting the Mental Health Tribunal, 1994-1996; President, Queensland Industrial Court, 1996-1997; and Chairman, Law Reform Commission (Qld) 1996-1997.

On 17 February 1998, he was appointed the Chief Justice of Queensland. He has held the following positions: Chair, Judicial Section, Law Association of Asia and the Pacific (LAWASIA), since 2006; Chancellor of the Anglican Diocese of Brisbane since 1991; member of the Chapter of St John's Cathedral since 1989; member of the Council of the Anglican Church Grammar School 1990-1997; President, Australian Cancer Society 1998-2001 (Vice President 1995-1998); Trustee of the National Breast Cancer Foundation 1994-1999; Chairman of the Queensland Cancer Fund 1994-2001; Member, Centenary of Federation Committee (Queensland), 1998-2002; Chair, Queensland Constitutional Convention, Gladstone, June 1999; Honorary Consultant Member, Independent Commission on the Future of Policing (UK), from 2012; Chairperson, Council of the Queensland Institute of Medical Research, from 20 June 2013.

In late July 2014, The Hon Justice Paul de Jersey AC will take up the appointment as Governor of Queensland.

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This speech was delivered at the Sir Harry Gibbs Law Lecture held at the Banco Court, Supreme Court of Queensland, George Street, Brisbane Qld on 2 May 2014.

INTRODUCTION

The College was delighted when the Hon Justice Paul de Jersey AC accepted the invitation to give the 2014 Sir Harry Gibbs Law Lecture. We were even more delighted when the Chief Justice offered the use of the Banco Court for the evening. With the highly significant mural ‘Dibirdibi Country’ by Sally Gabori as a backdrop, we were treated to an outstanding address. During the course of the evening the Chief Justice made reference to the important items recording the life and contribution of Sir Harry Gibbs within the building.

The name of Sir Harry Gibbs will be formally recognised within the College not only through the Scholarship annually offered in his name and the annual lecture/dinner but also through the renaming of the Rare Books Room of the old Supreme Court as the Sir Harry Gibbs Rare Books Room. We are thrilled that the Chief Justice has endorsed and encouraged this project and we look forward very much indeed to its installation in the College, overlooking the Brisbane River.

We are very pleased to honour Sir Harry Gibbs, the former Chief Justice of the High Court of Australia (1981-1987) and Emmanuel College’s most distinguished ex-collegian, through this new project which also preserves an important part of Queensland’s legal history.

The Gibbs Imprint at the Queen Elizabeth II Courts of Law

Professor Derrington, Mr Chancellor, Mr Attorney-General, Dr Gill, Your Honours, ladies and gentlemen.

I am honoured to deliver this lecture standing in the name of the late Sir Harry Gibbs, a one-time Judge of this Court, Chief Justice of the High Court of Australia, Privy Councillor.....international in participation and reputation. Apart from his judicial scholarship which may readily be gleaned from the law reports, there are many acknowledgements, in these Queen Elizabeth II Courts of Law, of Sir Harry's judicial and other public eminence.

A fine full-length portrait of Sir Harry as Chief Justice of the High Court of Australia, by Sir William Dargie, presented to this court by the State Government on the court's 125th anniversary, hangs outside my Chambers. With the gracious agreement of the Gibbs family, we now also have the ground-floor Sir Harry Gibbs Legal Heritage Museum with, as centrepieces, his GCMG and AC regalia. In the 16th level judicial corridor hangs his GCMG banner previously from St George's Chapel in St Paul's Cathedral, London.

It hangs there rather than in a public area because only there, in this 'crystalline' building, are the light levels low enough to exclude fading of the colours of the cloth.

Let me digress to tell you how I carried that banner back to Australia.

Kaye and I were invited formally by, I think, the Chancellor of the Order of St Michael and St George, though at the kind instance of the Gibbs family, to the annual service of the Order in St Paul's Cathedral in the presence of the Duke of Kent. It was held on 13 December 2006. It was at this service that the GCMG banner of the late Sir Harry, which previously hung in the Order's Chapel at the Cathedral, was to be 'laid up'.

As it happened, Kaye and I were planning travel to Europe for a European law conference, and could be in London on the very day of the Service. With some adjustment, we ensured we were. The Agent-General John Dawson accompanied us in Queensland House's Jaguar car with the Queensland flag flying: the long-serving driver Robin told us afterwards that intrigued Queensland tourists came up to him during the service at St Paul's asking what was going on inside of relevance to their home State.

After the service, the Gibbs daughters, rather poignantly I thought, presented me with the banner, which I carried back to Australia in my carry-on baggage.

There was a question about insurance. To insure the banner would have cost, on recollection, some hundreds of pounds, and the only cover would have been against forcible removal. The Agent-General and I thought we could safely bear any risk.

And so, last year, we saw the installation of that banner on the 16th level of this courthouse, on a staff sympathetically designed and created by the well-known specialist picture framer Mr Graham Reynolds; displayed in a complementary way to the similarly significant banner of Sir Samuel Griffith. The banners hang side by side.

The Gibbs banner had hung proximately to the bench in the old Banco Court since December 2006, when it was acknowledged at the Christmas Greetings Ceremony with the Gibbs family present. How generous of the Gibbs family to select this court as the destination for the banner, together with all Sir Harry's GCMG and AC regalia. A powerful competitor, of course, would have been the High Court, but no doubt it was Sir Harry's lifelong affection for his birth State which prevailed.

May I complete my account of that memorable day in London which began at St Paul's Cathedral? The Gibbs family kindly and generously invited Kaye and me to lunch with them at the Dorchester Grill – frankly another powerful reason for the revision of our travel itinerary. The Agent-General did not come to the lunch, but he gave us the continued use of the Jaguar, and even the Middle Eastern potentate Dorchester patrons lifted eyelids when they noted the stylish arrival of the Queenslanders. What was somewhat less impressive was our being bumped off the desirable prime position, reserved table, by a group with apparently greater appeal to the management – they included Barry Humphries and Sir Edward Fox! We nevertheless managed to enjoy a splendid luncheon of which Sir Harry would have been very proud, and our neighbours were careful not to bray too loudly.

That our court is favoured with these items is consistent with Sir Harry's lifetime devotion to the State of Queensland, his birthplace, notwithstanding he and Lady Gibbs lived in Sydney for many years. It is said one of his daily lifetime habits was to purchase and read the 'Courier Mail'. He always maintained deep friendships in Queensland, and followed its public life with abiding interest. I was personally greatly honoured to receive his letter of

approbation and support upon my appointment in 1998 as Chief Justice of Queensland, an office which, he then informed me, was once promised to him.

In his handwritten letter of 16 February 1998, he said of that promise, which was not fulfilled: ‘dis aliter visum’ – ‘it seemed otherwise to the gods’, and yes, my Junior Latin was not at the time of receiving the letter up to the translation.

He also expressed in his letter the sentiment that the office of Chief Justice, ‘although most important to the administration of justice, is not without considerable difficulties’. I early came to that realisation.

I think Dr Gill was moved to invite me to deliver this address by the Supreme Court Library’s donation of the Rare Books Room to Emmanuel College upon our move here from 304 George Street in August 2012. We are delighted this extraordinary and beautiful architectural ‘event’ has found such a worthy home, and that the college community is enthused by the acquisition.

The room, opened by the Governor on 11 February 2000, was constructed in the second level public space of the former courthouse to ensure the rare legal book collection – nationally significant, was actually displayed, and to enhance access to the books. I am sorry, Dr Gill, that we were constrained not to give you the books as well, but I am sure the College alumni, especially, will easily rise to the challenge of establishing a fine new collection.

The Rare Books Room was a startling addition to that second floor public corridor. The corridor was previously remarkable for its utter blandness. That extraordinary structure brought the corridor to life. The structure is as startling and interesting now as it was then. It is a beautiful contemporary piece of art and architecture.

The transfer of the structure was negotiated by our erstwhile Supreme Court Librarian, Mr Aladin Rahemtula OAM, whose mark rests indelibly on many aspects of court presentation, notably the Gibbs legacy, secured through his efforts, and the Rare Books Room, which was the result of his drive and imagination. Sir Harry Gibbs, a strong supporter of Emmanuel, would have warmly supported the relocation to the College of that facility.

Sir Harry was acknowledged by his co-residents at the College, through election as College Vice-President.

In that context, I mention that I prepared a draft of this evening’s address in January this year while carrying out some unusually uninterrupted reading and

research in the Bodleian Law Library at the University of Oxford. The founder of that library in the late 16th century, Sir Thomas Bodley, established what has been termed ‘The first practically public library in Europe’ (Dictionary of National Biography, vol 2, Beale/Bowell, p 758). It is the largest academic law library in the UK; its collection contains 550,000 volumes. It is a ‘deposit’ library, and non-lending.

I used that opportunity because I knew by then what was intended for me in relation to other public office, and I feared the demands on my time would only increase.

I have found that preparing addresses has consumed a substantial amount of my time as Chief Justice, and much more demanding for me than, I am sure, for Sir Harry with his classical education and historical command. I may however have learnt a little from what I knew of his method. It is said that he dispatched his briefs as Counsel strictly in order of receipt. He was no doubt aided in that by his acute appreciation of the law and the constraints it imposes. Sir Harry was not only a perceptive lawyer grounded in principle: he was methodical and efficient as well.

In his role with the Sir Samuel Griffith Society, of which as inaugural President he served from 1992 to 2004, Sir Harry invited me, some years ago, to deliver a paper at the Society’s annual meeting. I spoke on a subject which was then taking on some topicality, the growing tendency of executive governments to require courts of law to make decisions on essentially executive matters, especially those likely to entail controversy, thereby ‘borrowing’ the courts’ high reputation for independent, impartial decision-making. The issue has since spawned a lot of jurisprudence, from Kable to Fardon and beyond. This is not the occasion for any analysis of that. My theme then was that executive governments should be careful to avoid any erosion of public confidence in the work of the courts by compelling courts to determine matters which would usually fall outside the bounds of the courts’ already substantial remit. I mention this now because Sir Harry was, in attitude, strongly protective of the institutional integrity of the courts.

I suppose Sir Harry was what some would these days pejoratively label a ‘black letter’ lawyer. If that acknowledges he was astute to apply the law, no matter what the colour of the printing, then I would regard the description as a commendation not a criticism.

The judicial charge is not to render ‘justice’, which is an abstract quality subjectively, even idiosyncratically, measured, but to render ‘justice according to law’.

Judges, who are tenured, are strictly constrained by the law, as enacted by the elected parliament and as laid down in the common law through binding case authority. Many discretionary determinations are nevertheless left to Judges, and individual life experiences will impinge, and that is why the case law will often furnish blue-prints for the exercise of discretions, and as with sentencing in the criminal courts, statutes will often, and often in considerable detail, list the factors which must or must not, or may, be taken into account.

One of the important end goals is predictability of outcome. In an ideal world, once disputed facts are established, the solicitor should be able to advise the client in the office of the likely outcome. That is, essentially, because Judges apply the law.

Now as we know, sometimes the way the facts will be found cannot reliably be foreseen. Sometimes the law, whether statutory or common, is susceptible of varying interpretations. Sometimes appeal judges will disagree with trial or primary judges.

Those inevitabilities aside, our system works well because, so far as can be ordained, results are predictable, and that is because judges are true to their duty to deliver justice ‘according to law’.

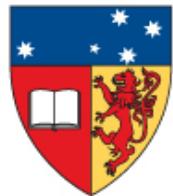
The system also works well because judges carry out their role independently of external influence, and respecting and not intruding into the remits of the other branches of government.

The reassuring end-position, of which I am confident, is that informed citizens who observe and think about our system of judicial government are confident about its operation. Problems sometimes arise, but they are more often than not addressed through the appeal process. Any perceived problem which survives that process may in an appropriate case be addressed by remedial legislation of the sovereign parliament.

Why do I reflect upon these grandeurs tonight? It is because this is the system, central to our democracy, which Sir Harry Gibbs, by his judgments and extra-judicial utterances, promoted and protected. Any departure, as I learnt myself, was appropriately given short-shrift.

He presided in the late 1970s at a special leave to appeal application in relation to a ruling, adverse to my client, in a so-called ‘bottom of the harbour’ tax evasion case: they were a feature of the late 1970s/early 1980s. They provoked enormous public interest, mainly because of the huge financial stakes involved, both gains and losses. At the hearing of the special leave application at the High Court in Canberra, I ran through the orthodox submissions, based on the meaning of the tax legislation and the like, the three Justices showing absolutely no interest in any of them. “Anything more, Mr de Jersey?” asked Sir Harry at the end of my set-piece. “Well”, I replied, “there is enormous public interest in this phenomenon, and that may warrant the Court’s reviewing the judgment.” Sir Harry: “The public interest has nothing to do with it”, although he did graciously allow me a tentative further minute or so, and then the court dismissed the application: ‘Justice according to law’.

Especially allowing for my respect for the undoubted and unflinching integrity of Sir Harry Gibbs, his deep learning and his achievement at the highest level, I have regarded it as an enormous privilege to deliver this address this evening, to deliver it in this courthouse which so proudly bears his mark, and to recognise the imminent establishment of another source of learning and inspiration in the relocated Rare Books Room now of Emmanuel College within The University of Queensland.



Emmanuel College
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enriching lives since 1911

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