

# Judge blessed with flawless logic

September 4, 2012

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## DAVID HODGSON, 1939-2012

If any incumbent of the NSW Supreme Court bench - so often stern and forbidding individuals - could fit the description of Plato's "philosopher king", it would be David Hodgson, who graced the bench for 28 years, stepping down only last year as the longest-serving Supreme Court judge at that time.

Brilliant in mathematics and a first-class honours graduate in law, Hodgson applied his capacity for reasoning to his judgments. The present Chief Justice, Tom Bathurst, said Hodgson's philosophy contributed "at the very least, to the flawless logic of his judgments".

David Hargraves Hodgson was born in Sydney on August 10, 1939, the son of a solicitor, Frederick, and Dorothy (nee Packer). He went to Sydney Grammar from 1950 to 1956, where he played rugby and served in the cadets. He was runner-up in the NSW under-18 chess championships, dux of the school, and topped the state in maths 1 and 11.

With University of Sydney and Commonwealth scholarships, Hodgson enrolled in law, graduating in 1962 with honours, in the same class as Michael Kirby and Murray Gleeson. He then set off for Oxford on a Rhodes Scholarship and married Raewyn Land in 1964.

Hodgson completed his DPhil with a thesis *Consequences of Utilitarianism*, an analysis of the ideas of the philosopher Jeremy Bentham. His supervisor, Herbert Hart, a professor of jurisprudence and an outstanding legal philosopher, described Hodgson as the ablest student he had ever had.

Hodgson returned to Sydney in 1965 and was admitted to the bar. He was assistant editor of *The Australian Law Journal* from 1969 until 1976. In 1978 Hodgson began a two-year stint on the Bar Council. In 1979, he became a Queen's Counsel and in 1983 was sworn in as a judge of the Supreme Court. He said in his acceptance that he would always be mindful that court judgments had an impact on the lives of people, and in the opinion of his peers he lived up to that. Hodgson, known as an exceptionally courteous judge, considerate of both counsel and plaintiffs, served as chief judge in equity from 1997 to 2001.

Hodgson retained an interest in mathematics and was able to use it in cases. On the bench, he was often able to do calculations in his head quicker than counsel could do them on gadgets. In one case, he presided over the discussion of Pythagoras's theorem and in another an analysis of evidence in the context of Newton's Third Law. He is said to have taken an interest in quantum theory and to have studied it in his twice-daily 40-minute train trips between his home in Sydney's north-west and the city.

In 1991, Hodgson published *The Mind Matters: Consciousness and Choice in a Quantum World*. From an early age, he said later, he had been fascinated by what went on inside the head that gave rise to conscious experience. From that rose the question of how free will should be measured against genetic and environmental influences, a serious matter when it came to weighing up the relative benefits of punishment and therapy. People did have free will, he concluded, but there were degrees to which their responsibility for their actions should be measured.

Hodgson also served as a part-time law reform commissioner and lecturer at the University of Sydney law school. In 2001, when he was appointed to the Court of Appeal, Justice Michael Kirby said: "Justice Hodgson is a person who mixes gently one of the sharpest intellects in the service of the courts of Australia and a genuine humility and approachableness. He will be an ornament to the Court of Appeal." Hodgson continued to apply his keen analytical mind. One senior counsel said it was pointless trying to put "spin" on the facts because Hodgson had already grasped the issues.

In 2009, Hodgson was made an Officer in the Order of Australia. His final philosophical work, *Rationality + Consciousness = Free Will*, was published in January.



Impact recognised ... David Hodgson with his Order of Australia insignia. Photo: Supplied

David Hodgson is survived by Raewyn, sons Michael and Philip, daughter Susan, seven grandchildren and siblings Roger and Diana.

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