

G Lindsay, *No Mere Mouthpiece: Servants of All Yet of None*, Chatswood,
LexisNexis Butterworths, 2002

FOREWORD

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Every investigation of the history of Australian legal institutions reveals the omnipresence of both continuity and change. The essays collected in this volume reflect this proposition. The capacity of our legal system, together with the institutional components of that system, to simultaneously deliver the legitimacy which longevity provides and adaptability to changing circumstances, makes a fundamental contribution to the social stability and the social progress of this nation.

Over the decades since the publication of Dr Bennett's *A History of the New South Wales Bar* in 1969, with which period the essays in this volume are primarily but not exclusively concerned, there have been numerous changes in the structure of the Bar and to its practices and procedures. Many of these changes have resulted from pressures for the expansion of access to justice. Others have arisen from the application of competition principles to the legal profession. This course is not yet complete. The debates over these decades have caused the Bar to focus, perhaps more than it would otherwise have done if it had been left alone, on those aspects of its practices and procedures that are of enduring significance.

The independence of the Bar has been reaffirmed as a fundamental element of the administration of our traditional system of justice. As our greatest lawyer, Sir Owen Dixon, said upon taking the oath of office as Chief Justice of Australia:

“The Bar has traditionally been, over the centuries, one of the four original learned professions. It occupied that position in tradition because it formed part of the use and the service of the Crown in the administration of justice. But because it is the duty of the barrister to stand between the subject and the Crown, and between the rich and the poor, the powerful and the weak, it is necessary that, while the Bar occupies an essential part in the administration of justice, the barrister should be completely independent and work entirely as an individual, drawing on his own resources of learning, ability and intelligence, and owing allegiance to none.”¹

¹ *Jesting Pilate* 1965 p245

Whilst his Honour's use of the male pronoun was understandable in 1952, it would not be applied today. Subject to that matter, his Honour's observations remain entirely apt.

The structural independence of the Bar as a corporate entity is based on the independence of its individual members, who are neither employees nor partners. By having to rely on their own resources, barristers develop an independent cast of mind and a capacity for objectivity. These qualities have always been, and remain, at the heart of our adversary system of justice. The single minded pursuit of the interests of clients, who after all will determine the earnings of a barrister, are often made subservient to the interests of the system, as reflected in the performance of duties to the Court. As a human institution, the system does not always operate to perfection in this respect. It does, nevertheless, operate to a substantial degree in accordance with these principles.

Experience at the Bar remains the most appropriate background and training for the replenishment of an independent judiciary, from which the Bar is primarily, though no longer exclusively, drawn. A tradition of such significance is worth commemorating when an appropriate milestone occurs. The centenary of the New South Wales Bar Association is such an occasion. I am sure all members of the profession will welcome this volume.