Chapter 9

The Judicial Method: Essentials and Inessentials*

To someone of my vintage, this gathering of District and County Court Judges from around Australia, with its principal object of reflecting upon "the Court of the Future", is itself a manifestation of change. Forty-six years ago, when I entered legal practice, the District Courts (plural) of New South Wales, as their name implied, were decentralised. That decentralisation was part of their reason for existence. It had benefits in terms of access to justice, especially for litigants in rural and regional areas. At the same time, it had its negative effects. Although the judges carried a heavy caseload of civil and criminal matters, their organisational framework was rudimentary. Judges, by comparison with their modern counterparts, had little in the way of institutional support. It was not unusual for them to be assigned for long periods, sometimes years, to areas distant from any central authority. There were no facilities for judicial formation or continuing professional education. Upon appointment to the bench, barristers were thrown in at the deep end. It was assumed that their experience as advocates would equip them to administer justice. There were some informal support networks, but most were left largely to their own devices. These judges enjoyed a high level of autonomy, but their professional lives must have been lonely. They rarely, if ever, sat in panels. Such collegiality as they enjoyed depended largely upon their own informal arrangements. A regular conference such as this, embracing all judges of comparable jurisdiction from around Australia, would have been unknown.

Even today, it is necessary for some appellate judges to be reminded that the collegial life they enjoy, (or at least experience), is not shared by most trial judges. A member of a Court of Appeal rarely sits alone, and works in constant interaction with his or her colleagues, who are accessible for information and support. In civil law countries, cases at first instance are normally decided by panels of three judges. (I might add that, because of their methods of judicial formation and appointment, at least two of those judges are likely to be, by our standards, surprisingly young.) In the common law tradition, however, trial judges sit alone. That is one reason why civil law countries have a greater number of judges per head of population than, say, Australia or the United Kingdom.

The individual nature of the responsibilities of a trial judge in a common law system has not been sufficiently appreciated. It is partly relieved by the relationship between bench and bar, but that tends to weaken outside major city centres. The level of assistance that trial judges can expect from the profession is inconsistent, and the growth in size of the profession and the judiciary has created a greater distance between them. One essential form of compensation has been the development of facilities for

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