

The fascinating life of James Martin

John and Patricia Azarias, co-founders of the Lysicrates Foundation, introduce us to the Martin Orations, named in honour of James Martin, QC, attorney general, premier and chief justice of New South Wales.

The hub of Sydney is named after a forgotten man. Not one in a hundred people could say today who he was. Yet the story of James Martin (1820-1886) is a very Australian one – poor boy makes good through talent and determination, rises to the highest positions in the land, and shapes the future of the nation. It is time he was better known.

Born in Ireland, James Martin, son of Governor Brisbane's horse groom, was brought up in the servants' quarters of Parramatta's Government House. His talents emerged very early, and by the time he was 12, it was obvious he had to go on with his education. In 1832, there were no high schools in Parramatta, so his father tried to get a job in Sydney, but failed. The penniless boy looked set for a life cleaning out horse boxes.

James, however, was having none of it. He told his father it was simple. To get to high school in Sydney, he would walk. From home in Parramatta. So for two years, until his father did find a job in the city, the boy walked, hitched rides, stayed overnight and did everything he could to get an education. Within two years, the Sydney school he walked to, W T Cape's Academy in Phillip St, merged with Sydney College, and moved into the newly-constructed building nearby which is now Sydney Grammar.

There the young Martin learned to love Greek and Latin and everything they conveyed – balance, moderation, beauty, learning, the rule of law, and democracy. With a rare gift for words, he wrote, at only 18 years old, Australia's first book on what life was like in the colony. The next step was easy. He went into journalism, and became a feared campaigner for the self-determination of the colony.

It wasn't enough. In his spare time, he studied the law, and within a few years, had built a flourishing practice as a solicitor, and later, as a barrister. By 1868, still a lover of the classics, he was rich enough to pay twenty thousand pounds for a spectacular garden for his Potts Point house, to contain the lovely sandstone replica he had commissioned of the Lysicrates Monument (built in 334 B.C. in Athens). Today you can find it in the Botanic Gardens, in an even more dramatic position.

But for Martin, even the law was not enough. He entered politics, as the protégé



of William Charles Wentworth. Soon he became the colony's attorney-general, and a QC, Australia's fourth, and first locally-trained, one.

And even that was not enough. He rose to become premier of New South Wales, three times, and ultimately, the first non-English chief justice. He is the only person ever to have filled all three roles.

So the poor Irish Catholic boy, whom the

wife of Governor Hercules Robinson refused to admit to her salon, who was blocked from becoming chancellor of Sydney University, and who was blackballed twice by one of the most prestigious Sydney men's clubs, ended up being able to 'break the wig ceiling' (as Katie Walsh says in her 8 March AFR article, *Just how white is the legal profession?* written on the occasion of the 2018 International Women's Day), in a world dominated by supercilious and exclusionary English practices. A triumph for the nascent diversity of Australian society.

The life is fascinating enough. But Martin's passions are even more instructive for us today. His ruling drive was self-determination for a strong colony. To that end, he started programs to train street urchins in a trade; as Premier he strongly supported his protégé Henry Parkes in the introduction of the Public Schools Act; he created the Mint, popularly called Martin's Mint, so that Australia did not have to depend on Britain for its coinage; he advocated for democracy and transparency in government, writing that 'one of the greatest evils arising from this system of irresponsible government is the mystery in which the motives and actual purposes of their rulers are hid from the colonists themselves'; he was the first major lawyer in the colony to promote its cultural and intellectual endeavours; and, together with Parkes, he canvassed ideas for its future governance.

Their biggest idea, of course, was federation. The two of them were often to be seen in one of their neighbouring Blue Mountains houses, sitting on the verandah sipping a drink in the sunset, discussing how federation could be shaped and brought into being.

As a politician, Martin may have been a firebrand. But as chief justice he was a model of scrupulousness and impartiality.

It is an indictment of our public education that the man who did so much to create it, and indeed our whole system of governance, has been allowed to fall into oblivion. However, Gilbert + Tobin and the Lysicrates Foundation have come together to revive our memory of James Martin, the man, and the boy.

Together they have established the annual Martin Oration, to remember and honour this giant of our past. Two Martin Ora-

tions have now been delivered, one by Tom Bathurst AC, Chief Justice of the NSW Supreme Court, and the other by Robert French AC, former Chief Justice of the High Court.

A signal feature of Bathurst's Martin Oration was its stress on Martin's actions to affirm judicial independence, to adhere to precedent, and to follow the court's established colonial practice (rather than any contrary English practice). We hear a distant echo of the firebrand under the full bottomed wig.

In this, as Bathurst shows, two strains of Martin's legal thinking are evident: on the one hand, the strength of his traditional view that the law was 'a body of rules and precepts to be interpreted and refined by judges; but to be changed, if thought fit, only by legislators'¹, and on the other, his opinion that those rules and perspectives should be those established in the colony, not in and by the mother country. A traditionalist shaped by his classical education to value the rule of law; but a modern man, shaped by the new environment of the colony.

Bathurst stresses, too, some of Martin's extra-legal activities: his work as a trustee of the Australian Museum, as a member of the Hyde Park Improvement Society, as a promoter of Sydney College, which became Sydney Grammar, and as a strong advocate for children's welfare and education.

In his Martin Oration, French builds on the approach taken by Bathurst. He begins by regretting how little contemporary Australia does 'to celebrate those leaders of the Australian colonies who created the conditions for one of the world's most successful and durable representative democracies'.

Going on to highlight the broad issue of public trust and leadership, he points out that throughout his whole life Martin 'upheld the dignity and authority of all three of his high positions, was never accused of impropriety or corruption, and profoundly believed in the concept of public service as a public trust'.

He goes on to highlight Martin's contemporary relevance – to the 'idea of public office as a public trust and the related idea of public trust in the workings of our democracy and its institutions which underpin their legitimacy, their authority and their effectiveness'.

Against Martin's upholding of the concept of public service as a public trust, French looks at today's rather different climate. Today, he says,

Democracy and its institutions are under challenge around the world... [we see] declining trust and rising populism... [and] disenchantment and lack of trust open the way for the snake-oil salesmen of populism, to come in from the bad lands of political ideologies to offer their own simplistic nostrums.



A replica of the Lysicrates Monument, which Martin commissioned for his Potts Point home, now found in the Botanic Gardens, Sydney.

Photo: Kgbo / Wikimedia Commons

Lamenting the 'partisan clamour' becoming endemic in Australia, he homes in on the key issue. 'The first responsibility of the holders of public office, parliamentary officials or judicial, in meeting the threat posed by those trends, is to treat each of their offices as a trust and commit to explaining what they are doing and engaging intelligently with their publics . . . trust by the people in their own institutions and trust-like behaviour by public officers are the fundamental binding force of our democracy'. To reinforce the point, he cites Brennan CJ, who in 2013 said 'all decisions and exercises of power [should] be taken in the interests of the beneficiaries, and that duty cannot be subordinated to, or qualified by, the interests of the trustee'.

But while French is alert to the threats, he is not in the end pessimistic for Australia. He ends his Oration with the words:

'Despite criticisms and concerns about the current state of democratic government, Australia remains a stable, durable and successful democracy. It could be better than it is. It is part of the legacy that Sir James Martin and his fellow nation-builders left to us. It is our duty to pass it on, at least intact, and, if possible, enhanced, to succeeding generations'.

We are fortunate to see such eminent jurists following Martin's thoughtful and civilised precedent. Their distinction of mind is a modern reflection of that of Martin himself.

END NOTES

¹ J M Bennett, *Sir James Martin*, The Federation Press, 2005 p. 313, quoted by Bathurst in his Oration.

The Lysicrates Foundation has sought to revive the memory of James Martin through a number of initiatives. The Legal Friends of Lysicrates and James Martin (patron T C F Bathurst CJ) has been established to support the work of the Lysicrates Foundation. The sandstone Lysicrates Monument, which he financed, a replica of an ancient Athenian original built to celebrate a win in the play competition that stopped the city every year for a week, has been restored through the Foundation, with the generous support of the NSW government; and two drama competitions on the ancient model have been inaugurated: the Lysicrates Play Competition, where it is the diverse (non-paying) audience that chooses the winner, and the Martin-Lysicrates Play Competition for plays written for children, held in Western Sydney, where it is the children who vote for the winner. The fourth Lysicrates Play Competition was held on Sunday 11 March at the Opera House. The Governor of NSW, General the Hon. David Hurley AC, DSC (Ret'd), presented the prize to the winner, Travis Cotton, in a strong field including Christine Evans and H Lawrence Sumner.

In addition, the Lysicrates Foundation has sponsored two statues of the boy James Martin striding off to school, and an illustrated book, *Lysicrates and Martin: Two Arts Patrons return to give again*, MUP 2017, about the Foundation's first three years.

Gilbert + Tobin is a major Australian law firm. It places a strong stress on corporate social responsibility, and supports numerous public interest initiatives in the areas of justice, culture and sport.

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