Chapter 22

Varieties of Judicial Method in the Late 20th Century*

Throughout his long and rich life RP Meagher was active in many spheres. The law was only one of those spheres, but in it he played several roles. Some were successive and some were concurrent. He had an unusually brilliant career as law student, advocate, adviser, legal writer, legal teacher and judge. The number of people attending this evening, and their variety, is a mark of the extent to which he is remembered with deep respect and affection in a multitude of circles. It is right that he should be.

He began to have close contact with the law in his first year at the University of Sydney Law School in 1954. He retained close contact with the law for more than five decades. The purpose of this lecture is to reflect on some aspects of judicial method in both trial and appellate courts during that period. What conditions affected it? How did those conditions change? What impact did those changes have? What challenges does judicial method face?[1]

The common law world in 1954

A bird's eye view of the major common law jurisdictions moving west from the International Date Line in 1954 would start with New Zealand. In those days the judicial system of New Zealand operated almost perfectly. That slice of Scotland which was the small city of Dunedin had a much more significant role in the life of that country then than now, and the Scottish tradition in New Zealand life generally was strong. Although the judges knew little of Scottish law—which is worth examining, and which is recorded in Shaw, Dunlop, McPherson, Rettie, Fraser and the later innominate Session Cases—they shared with the Scottish judiciary professionalism to a marked degree. There had been no famous names since Salmond, but any reported case would reveal a steady, skilful, tradesmanlike approach. Thereafter two events happened which, for better or for worse, have changed New Zealand law for ever. On 8 November 1972 Robin Brunskill Cooke was appointed to the bench. On 25 September 1990 the *New Zealand Bill of Rights Act 1990* came into force.

To the north-west lies Hong Kong. In 1954 few would have stopped there. Now many would. The Hong Kong courts are full of capable judges, and not just those who are non-Permanent Judges of the Court of Final Appeal.

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1 Various examples from the conduct of particular judges are given. For obvious reasons those are all taken from the careers of judges who retired some time ago, all but five of whom are no longer alive.