

THE HON T F BATHURST
CHIEF JUSTICE OF NEW SOUTH WALES
KEYNOTE ADDRESS
INAUGURAL SIR JAMES MARTIN ORATION
FRIDAY 25 NOVEMBER 2016*

1. It is a pleasure to have the opportunity to address you tonight at the inaugural Sir James Martin oration. I would like to begin by acknowledging the traditional owners of the land on which we meet, the Gadigal people of the Eora nation, and pay my respects to their elders past and present.
2. I would also like to extend my thanks to the Lysicrates Foundation for organising tonight's event. In particular, I thank John Azarias for providing me with many resources about Sir James Martin. I also extend my thanks to Danny Gilbert and Gilbert and Tobin for hosting this event.
3. Sir James Martin's life was one of both great accomplishment and great controversy. His career spans many aspects of public life. He was a journalist, politician, solicitor, barrister and Attorney-General. He was three times Premier and was ultimately appointed to the highest judicial office in NSW.
4. Martin has been described as exceptionally intelligent and driven, as having a "chameleon-like compatibility with his prevailing environment", but also as having "implacable self-confidence", a "sense of theatre, of bravado" and an "uninhibited pursuit of controversy".¹
5. Today I will speak about the fascinating and important life of the first Australian trained Chief Justice, who the hub of the city is named after. Of course, I cannot detail every aspect of Sir James Martin's exciting life. He is

* I express my thanks to my Research Director, Ms Sarah Schwartz, for her assistance in the preparation of this address.

¹ The Hon GJ Samuels AC, 'Foreword' in JM Bennett, *Sir James Martin* (The Federation Press: 2005) v-vi.

a man who accomplished a great deal. Rather, I will provide a broad overview of Martin's life and achievements. I am indebted to legal scholars and historians for dissecting early historical records and providing the information on which I rely in this address.

Martin's early life

6. Sir James Martin's early years tell the story of a self-made man who excelled due to his intellectual capabilities and drive to succeed.
7. Martin was born in 1820 in Midleton, Ireland and came to Australia as an 18 month old infant. His father, John Martin, was Governor Brisbane's horse groom. Martin grew up in the servants' quarters of Parramatta Government House.
8. He began his education at the Catholic School in Parramatta, where he is said to have been a brilliant student. So much so, that at the age of 12, his parents made sacrifices so that he could attend W.T. Cape's School, the Sydney Academy.²
9. One of his contemporaries, who would later become the novelist 'Rolf Boldrewood', described Martin as "always *facile princeps* among us – in every class, in every subject."³ In 1886, the *Sydney Quarterly Magazine* recalled Martin's "restless curiosity" while at school, as well as his "love of adventure ... incessant intrepidity ... love of practical jokes, vivacity, and frolic. ... Indeed, his early disposition was so marked by warmth of temper and animated enthusiasm that he was found in every daring prank and understanding."⁴

Martin as the author, journalist and editor

10. Upon completing his schooling in 1836, Martin embarked on a career as a reporter and journalist. He contributed to publications such as the *Australian*, the *Sydney Free Press and Commercial Journal* and the *Australasian Chronicle*. As a teenager, he caught the eye of the editor of

² JM Bennett, *Sir James Martin* (The Federation Press: 2005) pp 3-8.

³ Cited in *ibid* p 7.

⁴ Cited in *ibid* p 7.

the *Australian*, GR Nichols, who employed him for a time as sub-editor.⁵

11. At 18, Martin published a collection of essays under the title, *The Australian Sketch Book* and professed, not entirely correctly, that his work was “the first literary production that has ever emanated from the pen of an individual educated in Australia.”⁶ The book has been described as “[e]xtraordinarily precocious and pompous in style, Martin sought in his sketches to represent himself as a man of mature years reflecting on people, places and events of long ago”.⁷ Nonetheless, the book kick-started Martin’s journalistic career and gained him the support of Nichols, who was not only the editor of the *Australian*, but also a well-known barrister.

12. Soon after publishing his first book, Martin began to pursue a career as a lawyer and was admitted as a solicitor in 1845. Following this admission, Martin was invited to become editor and manager of the *Atlas*, a Sydney weekly with the fundamental object of campaigning for responsible government.⁸

13. In this position, Martin became known for his “aggressive and abrasive style”.⁹ He insulted politicians and judges alike. He criticised the former Governor of NSW, Sir George Gipps, for his neglect of Parramatta Road, writing, that “[t]o grind us down, and oppress us in every conceivable way, seems the sole object of the present administration – and the state of Parramatta Road is but a small item in the cup of bitterness which we are made to swallow, to suit the caprice of Sir George Gipps”¹⁰

14. He described Justice Therry of the Supreme Court as “a truckling judge”, who delivered a judgment displaying “in supereminent degree, that dodging and shuffling which has throughout characterized its author’s public career, and rendered it so degradingly conspicuous”.¹¹ In one instance, he criticised Chief Justice Stephen for alleged inattention in charging a jury. Martin wrote, “of the inconsistency of the Chief Justice, and his ludicrous

⁵ Ibid p 8.

⁶ Cited in ibid p 9.

⁷ Ibid p 9.

⁸ Ibid p 14.

⁹ The Hon GJ Samuels AC, above n 1, v.

¹⁰ JM Bennett, above n 2, p 15.

¹¹ Cited in ibid pp 22-23.

endeavours to make contradictory opinions dovetail into each other”.¹²

15. Throughout these years, Martin also established his practice as a solicitor and then barrister.

Martin as the politician

16. In 1848, when he was 28 years old, Martin was elected to the NSW Legislative Council, famously beginning his career by suing the Speaker and the Sergeant-at-Arms. After a controversy surrounding his Council membership ended with him being re-elected, Martin sued the Speaker and Sergeant-at-Arms for unlawfully ejecting him from the Council chamber. According to Doctor Bennett, an adjunct Professor of Law at Macquarie University, “[h]is points of order, at first rather laughed at as being precocious, came instead to be respected after his Supreme Court success in his proceedings against Speaker Nicholson. That success demonstrated to the Council that he knew much more about the law and parliamentary technicality than did most of his colleagues in the House.”¹³

17. As a politician, Martin described himself as a “strong Conservative” in the English sense.¹⁴ However, he also held many liberal views.¹⁵ He made substantial efforts to attain a constitution for the colony of NSW, in order to render it self-governing and free from the powers of the so-called oppressive Colonial Office at Westminster.¹⁶ Martin also supported various community welfare initiatives including legislation providing for the guardianship and education of young criminals, investigation into the treatment of the criminally insane and the Destitute Children’s Bill.¹⁷

Martin as Attorney-General

18. In 1855, the *New South Wales Constitution Act* was passed and the first Premier, Sir Stuart Alexander Donaldson, was commissioned. Martin was not part of the new Donaldson ministry. However, in 1856, when the

¹² Ibid p 23.

¹³ Ibid p 82.

¹⁴ Cited in *ibid* p 313.

¹⁵ Ibid pp 313-314.

¹⁶ Ibid p 48.

¹⁷ Ibid pp 76-77.

Donaldson Ministry fell and Sir Charles Cowper formed government, Martin became Attorney-General.

19. When Cowper's Ministry fell soon after it originally came into power, Martin began to plan his return to office. He brought a number of censure motions against the new Premier, Sir Henry Parker. At the time, the *Herald* said of Martin, "[h]ow perseveringly he has laboured to worry the late Ministers out of office – how he has toiled to form a party ... how he has proved readiness to do anything by swallowing his previous statements and reversing his former votes ... No one mistakes Mr Martin for a patriot, or supposes that he believes in anything but himself."¹⁸

20. By September 1857, Cowper was back in office and Martin was Attorney-General. At the time, Attorney-Generals were entitled, by virtue of their office, to a silk gown. Martin asserted this right and became the fourth Queens Counsel in NSW on 12 November 1857. As Attorney-General, Martin was described as "indolent", "and his performances in the House were lackadaisical".¹⁹ This can be explained by Martin's commitment to establishing a successful practice at the Bar. Indeed, during this time, he spectacularly progressed at the Bar. Newspapers attest to the frequency of his successes.

21. Martin's lack of commitment to the position of Attorney-General and the Cowper Ministry led to his resignation in 1858. Following his resignation, he could turn his full attention to his Bar practice, which became one of the most successful in NSW. As a barrister, he was well-known for being a leader of the NSW Bar. One writer stated that "as a lawyer, Sir James Martin ... stood far above every man at the Bar of Australia."²⁰

Martin as Premier

22. Sir James Martin had three periods as Premier, from 1863 to 1865, from 1866 to 1868 and from 1870 to 1872.

¹⁸ Ibid p 113.

¹⁹ Ibid p 122.

²⁰ Cited in ibid p 217.

23. Controversially, Martin took up the Premiership with the additional role of Attorney-General, simultaneously holding both offices.

24. Martin's capacity to shift his position according to his circumstance is demonstrated in his legal work. As a barrister, he had defended Frank Gardiner's gang of bush rangers. When he became Attorney-General, he found himself prosecuting Gardiner himself.

Martin as Chief Justice

25. In 1872, Martin was appointed Chief Justice following Sir Alfred Stephen. His appointment was an obvious choice. He was the preeminent lawyer of the legal establishment at the time. Upon his appointment, and retirement as Premier, the *Bathurst Times* wrote, "Henceforth we have lost our Rupert of debate; henceforth we shall miss the keen subtlety of thought and vigorous expression of opinion, which ever rendered Sir James Martin a power in the House."²¹

26. At the Supreme Court, Martin's life was not easy. As described by Rodney Cavalier, "[h]e found himself in dispute over his right to serve as Lieutenant Governor and serious political trouble over advice to the executive government about the early release of the aforesaid Frank Gardiner."²²

27. However, Martin proved to be an effective Chief Justice. He presided over most sittings of the Full Court and carried the burden of the court's administration. He sat on leading decisions such as *R v White*,²³ introducing the common law offence of bribery in public office in NSW. In *Meymott v Piddington*,²⁴ Martin affirmed the importance of judicial independence by finding that the government had violated the *District Courts Act* by reducing the salary of a District Court judge.

28. Despite his prior political affiliations, Martin has been described as having "a scrupulous detachment from politics and in court was invariably a model of judicial equanimity and imperturbability. ... With his conservative political background it is not surprising that as a judge he was no reformer ... But he

²¹ Ibid p 253.

²² R Cavalier AO, 'Preface' in JM Bennett, *Sir James Martin* (The Federation Press: 2005) xi.

²³ *R v White* (1874-1875) 13 SCR 322.

²⁴ *Meymott v Piddington* Knox 306.

demonstrated sound judicial method and adherence to precedent, and a refreshing preference for reliance upon the court's settled colonial practice rather than any contrary English practice."²⁵

29. As stated by Bennett, "Martin was conservative as a lawyer and conservative as a politician. His legal conservatism was found in his disapproval of judicial innovation. He saw the law as a body of rules and precepts to be interpreted and refined by judges; but to be changed, if thought fit, only by legislators. Hence the Supreme Court, in his time, produced great legal stability, but relatively few creative precedents."²⁶

Conclusion

30. Martin is remembered as the first Australian Premier and Chief Justice, and the only person to have occupied both positions. Outside of politics and the legal profession, he was a committee member of the Hyde Park Improvement Society, attesting to his love of trees, as well as a long-standing trustee of the Australian Museum. In 1880, he was President of the New South Wales Commission for the Melbourne International Exhibition, and he was active in gentlemen's clubs. He also maintained an unflagging interest in the education of the youth of NSW through his involvement with Sydney College.²⁷

31. Sir James Martin's career is indeed remarkable and his achievements are without parallel in the history of NSW public life. His career is reflected in the aspects of our nation's life now represented in and around Martin Place – news organisations, law offices, Parliament house, the State Library and of course, the Supreme Court of NSW. As stated by James Anthony Froude in 1886, "Sir James Martin has been a great official but the *man* is more".²⁸

²⁵ The Hon GJ Samuels AC, above n 1, vii.

²⁶ JM Bennett, above n 2, p 313.

²⁷ Ibid p 316.

²⁸ Cited in Elena Grainger, 'Martin of Martin Place: A Biography of Sir James Martin' (Alpha Books, 1970).