

Reflections on some aspects of NSW Masonic Jurisprudence

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Introduction

The aim of jurisprudence is to critically analyse the purpose and application of the law through analytic, historical and philosophical perspectives¹. Masonic jurisprudence does not refer solely to the Civic Laws which Freemasons and Masonic Institutions have to obey but mainly to the internal legal structure of the Global Fraternity² and individual Grand Lodges and Lodges themselves. Obeying the Civil Law is regarded as a fundamental responsibility.

In a system of law one looks for equity, clarity of definition, enforceability and permanence. As law is at the root of Governance one also looks for representation, accountability and transparency and the power balance between the Legislative, Judicial and Executive arms.

Of course life is not perfect and Masonic law isn't either. This paper aims to look at some of the various changes that have taken place since our Grand Lodge was formed and where we are now from these perspectives. The paper only applies to the Craft Lodge.

What is Law?

The enactment of Civil Law is not intended to restrict behaviour but to conserve societal values³ which may otherwise be lost in the myriad of affairs in which people enmesh themselves. Law is not intended to create any additional effort of compliance but to reduce wasted effort by defining proper paths for the balancing of conflicting interests. This is equally appropriate to Masonic Law.

The Landmarks of the order

An understanding of the landmarks of the order is the first basic step in understanding Masonic Jurisprudence as the landmarks stand before and above any Constitution or Regulations and no law passed by Grand Lodge can contravene a landmark⁴ so they should be clear and fully defined. This principle is internationally observed⁵. Our landmarks define our very being as Freemasons and relate to our historic roots.

For those who are not convinced that dependence on the legal precedence of the ancient landmarks is necessarily a useful thing, a moral justification has also been put forward as follows: -

“Since corrupt people seldom perform any memorable actions worthy of emulation, it follows that to recall men to ancient maxims is generally recalling them to virtue”⁶.

The problem is that the landmarks are ill-defined because they are often not found in written form that establishes them with an unambiguous status. Our United Grand Lodge of NSW and ACT has not defined them so this paper has no authoritative basis other than historic documents for doing so.

¹ MasonicDictionary.com

² “Masonic Jurisprudence” Book by Roscoe Pound PDGM 33^o Professor of Jurisprudence Harvard University

³ Op cit Pound

⁴ “An Introduction to Masonic Jurisprudence and the Laws of Freemasonry” UGL NSW 1984

⁵ See “More Light on Freemasonry” booklet by the Grand Lodge of New Brunswick

⁶ Grand Lodge of Ancient Universal Mysteries (Irregular) website

However, every Mason is obligated to the landmarks and while people feel that they can have their own definition of these landmarks there will always be uncertainty or confusion in Freemasonry.

In surveying terms a landmark or “Trig” is a point to which all others are referenced – it is established first. In Masonic terms a landmark is permanent and has existed “since time immemorial”. It is the historic basis from which all Masonic Constitutions, regulations and other jurisprudence has sprung.

It is best therefore to look to history to understand what the landmarks should be. Mackey’s⁷ definitions of the landmarks of Freemasonry are, in my view, the best available because he looked back over the ancient charges and manuscripts to identify their common practices which best defined the common and unique character of the earliest Lodges. From this research he defined 25 landmarks as follows (in abbreviated and paraphrased form).

1. The modes of recognition
2. Three degrees
3. The legend of the third degree
4. Government by a Grand Master
5. The prerogative of the Grand Master to preside over all assemblies
6. The prerogative of the Grand Master to grant dispensations for conferring of degrees
7. The prerogative of the Grand Master to grant dispensations for holding Lodges
8. The prerogative of the Grand Master to make Freemasons on sight
9. The necessity of Freemasons to congregate in Lodges
10. The government of a Lodge by a Master and Wardens
11. The necessity of a Lodge to be duly tiled
12. The right of every Freemason to be represented in all general meetings
13. The right of every Freemason to appeal to the Grand Lodge
14. The right of every Freemason to visit any regular Lodge
15. No visitor, unknown to the brethren present, can enter a Lodge without passing an examination
16. No Lodge can interfere with the business of another Lodge
17. Every Freemason is amenable to the laws and regulations of the Masonic jurisdiction in which he resides
18. The qualification of a candidate for initiation
19. A belief in the existence of God as the Grand Architect of the Universe
20. The belief in a resurrection to a future life
21. The Book of the Law shall constitute an indispensable part of the furniture of every Lodge
22. The equality of all Freemasons
23. The secrecy of the Institution
24. The foundation of a speculative science upon an operative art
25. These landmarks can never be changed

In one sense the landmarks are a Masonic Bill-of-Rights but they also define procedures or customs.

They lay the foundation of procedures for mutual recognition between Grand Lodges and the regularity of Lodges and their operations. They have international significance not just local application so should be internationally recognized.

⁷ Mackey’s Masonic Jurisprudence revised by Robert Ingham Clegg 33° The Masonic History Company 1927

Mackey's definition of the landmarks of the order is by no means unanimously accepted and has been debated through the ages. The eminent Harvard jurist Roscoe Pound⁸ states his view as: -

“For myself, I should recognize seven landmarks, which might be put summarily as follows: (1) Belief in God; (2) belief in the persistence of personality; (3) a "book of the law" as an indispensable part of the furniture of every lodge; (4) the legend of the third degree; (5) secrecy; (6) the symbolism of the operative art; and (7) that a Mason must be a man, free born, and of age. Two more might be added, namely, the government of the lodge by master and wardens and the right of a Mason in good standing to visit. But these seem doubtful to me, and doubt is a sufficient warrant for referring them to the category of common law”.

This is curious in that doubt is given as the criterion for relegating their importance to the status of the Constitution which can be changed, albeit with some difficulty, by a Grand Lodge. Doubt about an ancient landmark presumably ought to arise if the issue could not be found uniformly in all, or at least many, of the ancient charges and manuscripts.

In more pragmatic terms, surely the issues which ought to stand above a Constitution are those issues by which we hope and expect to be bound by international recognition and I would hope that the right to visit would be one of those.

The Constitution

The constitution is prepared by and can be altered by Grand Lodge which *“alone has the inherent power of enacting laws and regulations for the government of the Craft always taking care that the ancient Landmarks of the Order be preserved”*⁹.

Who are members of Grand Lodge? When the act of Union was passed and our United Grand Lodge was formed in 1888, the membership of Grand Lodge initially comprised only the Master and Wardens of each Lodge in the Jurisdiction¹⁰, the elected Grand Master and his officers. There were initially 175 Lodges which formed the United Grand Lodge¹¹ so even then it was a fairly large group.

This membership qualification fulfilled the landmark which gave every Freemason the right to be represented in all general meetings (by his Principal Officers). It also gave equal representation to all Lodges and equal voting rights (provided they attended the general meetings).

It could also be said that this truly represented the historical manner in which the Grand Lodge of England was formed in 1717 (except that all of the members of the four Lodges that formed this Grand Lodge were members of it not just the Principal Officers¹² {at least at first}, but only the WM and Wardens of all other joining Lodges were members).

But this qualification for membership soon changed and past Masters and past Grand Officers retained or gained their membership thus giving older and larger Lodges more voting power.

⁸ Op cit Pound

⁹ Constitutions of The United Grand Lodge of New South Wales and the Australian Capital Territory 1996

¹⁰ *“Masonic Jurisprudence in New South Wales”* R W Bro W R Day UGLNSW 1922 revised 1936

¹¹ *“The road to independence: the Masonic and political experience in nineteenth century New South Wales”* R W Bro R J Linford

¹² Op cit Linford

It changed again in 1998 when all Master Masons were admitted as voting members of Grand Lodge¹³. This further diluted the one-Lodge, one-vote (well 3 votes) principle in favour of “universal suffrage” as an expression of equity although Fellow Crafts and Entered Apprentices, even though they pay dues to Grand Lodge, are still excluded from voting.

The Grand Master

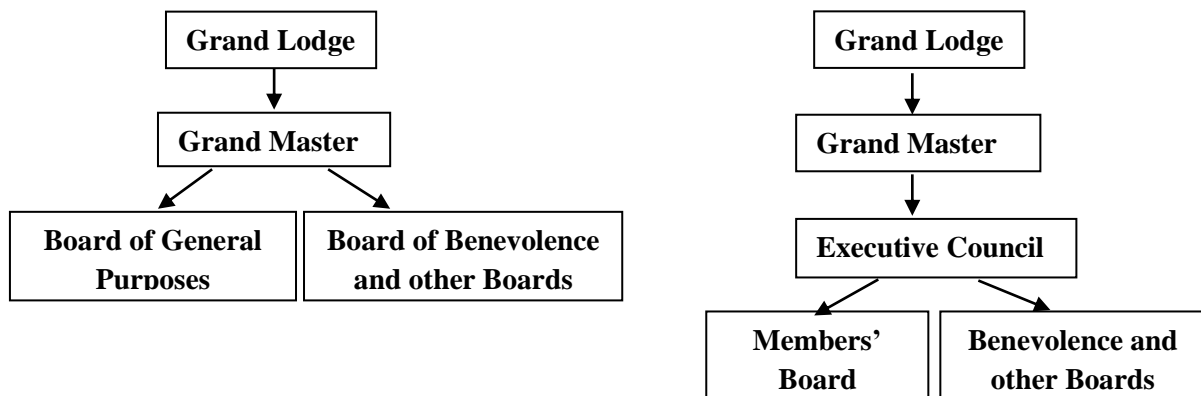
The Grand Master presides over the Grand Lodge and may preside over any Lodge. He can create Committees for whatever purpose and appoint members to such Committees. He can call Special Communications and issue dispensations. He can recall Charters of Lodges for just cause. It is accepted that a Grand Master can issue edicts which must be obeyed and against which there is no appeal and for which he is not required to provide an explanation.

The Management of Grand Lodge

Grand Lodge has established several Boards and Committees to administer its various functions. The number, membership, devolved powers and rights of appeal are directly relevant to any discussion about governance.

The most relevant Committee to this discussion was initially called the Board of General Purposes, which consisted originally of the GM, Pro GM, DGM, Grand Treasurer, Grand Registrar and a President together with 15 elected members from within 15 miles of the Sydney GPO and six from outside this radius – 28 in total with 21 elected. By 1927 the AGM and deputy Grand Registrar had been added to this Board making 30 in total. All members had to be WMs or PMs and a member of a Lodge in the Jurisdiction. The geographic qualification was soon changed to the County of Cumberland to clarify its boundaries¹⁴.

A major change occurred in 1986 when the structure of Grand Lodge management was amended to superimpose an Executive Council responsible to, and chaired by, the Grand Master to which the various Boards reported.



The members of the executive council comprised the “chief administrative officers of the Grand Lodge and the Chairman of the five (5) working boards¹⁵” that is the GM, Grand Treasurer, Grand Registrar and Chairmen of the Members Board, Board of Benevolence, NSW Masonic Hospitals Board, The Masonic Buildings Board and the Board of Youth Support¹⁶ - 8 in total.

¹³ Constitutions of the United Grand Lodge of New South Wales and the Australian Capital Territory 1998

¹⁴ “Masonic Jurisprudence in New South Wales” R W Bro W R Day UGLNSW Addendum 1926

¹⁵ “Constitutional change in new South Wales” paper by R W Bro J E Armfield, Grand Registrar 30 Sept 1995

¹⁶ Constitutions of the United Grand Lodge of New South Wales and the Australian Capital Territory 1996

By 2005 it was reduced to the GM, DGM, Grand Treasurer, Grand Registrar and the Chairmen of the Board of Management (renamed from the Members' Board) and the Grand Charity Board (also renamed) because the Masonic Buildings Board had been abolished, the responsibility for its functions being given to the Members' Board.

R W Bro J Armfield¹⁷ reported that this overcame several difficulties – that “*there was no executive body responsible for coordinating the activities of the various Boards and Committees of Grand Lodge and having responsibility for finance and budgeting*”, that “*the size of Boards and Committees were too large*” and that “*the Regulations imposed inappropriate and onerous duties upon the Grand Master*”.

At that time (1986) the Board of General Purposes consisted of 22 members and Bro Armfield reported that “its size made it impossible for it to effectively and expeditiously deal with an agenda as diffuse as came before a Board of such a size”. It was replaced by a Members' Board which consisted of 10 members intended to address the issue of declining membership. Other Boards were also reduced in size and the Ritual and Education Committees brought under the Members' Board. The Grand Master was given the power to appoint Chairmen for the NSW Hospital Board and the Board of Youth Support instead of being required to chair them himself.

By 1993, however, despite continued declining membership, the Members' Board¹⁸ had grown and now consisted of the GM, Pro GM, DGM, AGM, Grand Treasurer and his deputy, Grand Registrar and his deputy, a Chairman, 15 Metropolitan members of which nine are elected and six appointed by the GM and 6 country members of which 3 are elected by Grand Lodge and 3 appointed by the Grand Master – 30 in total with 12 elected. Size did not apparently matter by then.

However by 1996 the Members' Board¹⁹ was reduced to the GM, DGM, AGM, Grand Treasurer, Grand Registrar, a Chairman, 4 Metropolitan members and 4 country members (all elected by Grand Lodge) and 4 members appointed by the Grand Master – 18 in total with 13 elected.

By 2005²⁰ it had been renamed the Board of Management and further reduced to the GM, DGM, AGM, Grand Treasurer, Grand Registrar, a Chairman and six members having special experience in specific fields, who are to be nominated by the Executive Council for election in Grand Lodge – 12 in total.

Regional Administration

The old office of Grand Inspector of Workings was assisted by the formation of District Grand Inspector of Workings, which was established almost immediately after the United Grand Lodge was formed and by 1936 there were 586 Lodges grouped in 61 Districts²¹. There were 334 Lodges and 61 DGIWs listed in the 2012 directory but this number is under review and is likely to be reduced substantially²².

¹⁷ Op cit Armfield

¹⁸ Constitutions of the United Grand Lodge of New South Wales and the Australian Capital Territory 1993

¹⁹ Constitutions of the United Grand Lodge of New South Wales and the Australian Capital Territory 1996

²⁰ Constitutions of the United Grand Lodge of New South Wales and the Australian Capital Territory 2005

²¹ The Masonic Guide of New South Wales 1936

²² Grand Lodge Circular May 2012

These officers are selected from amongst the Past Masters of Lodges in the District and are elected by Grand Lodge so there is a real sense of local participation in their activities. They bring knowledge of local conditions to the administration as well as being on-the-spot avenues for communications.

The 1986 restructuring also included the creation of a number of Regional Grand Councillors intended to improve regional communications and I have no doubt that this result was achieved. There were initially 10 regions but this was expanded to 13 and is now being reviewed with the intention of reducing that number. The means by which these officers are selected is unclear in the Constitution but in practice they are selected after interviews by members of the Executive Council and recommended to Grand Lodge.

The potential loss of communications involved in this proposed reduction in these numbers can be achieved through greater use of electronic media and is aimed to reduce administrative costs involved in supporting these officers.

Regulations

In 2005 another important change took place when the Grand Lodge delegated to the Executive the power to make regulations provided that: -

- They were not inconsistent with any clause in the Constitution;
- The Grand Lodge can set them aside; and
- They are promptly publicized.

The purpose of this change was to separate administrative functions into a regulatory role and isolate them from Constitutional matters. Although there were many minor amendments to the Constitution at the time, they were mainly for clarification purposes²³ but the devolution of power to the Executive Council was a major shift in the balance of authorized power.

The Judicial Function

The Grand Registrar's Committee, consisting of the Grand Registrar, his Deputy and five members appointed by the Executive Council, advises and assists the Executive Council and all Boards on any constitutional, judicial or legal matters falling within their respective areas of responsibility.

The Committee is empowered to conciliate on matters of dispute and hear and adjudicate Masonic complaints or irregularities.

Penalties and Sanctions

Masonic law is enforceable. However Masonry differs from the Civil Law in that the penalties are basically a matter of conscience, and the sanctions are the poor opinion of other Brethren and the power given to the elected officers to reprimand, fine, suspend or expel Brethren from the membership. In New South Wales only Grand Lodge in open communication can expel a Brother (unless through criminal conviction), the Grand Master, after investigation and by the Member's Board and/or the Grand Registrar's Committee, may admonish or fine a Brother (the old Board of General Purposes did fine Lodges²⁴) but a Lodge may expel or suspend one of its members from its Lodge.

²³ Draft Book of Constitutions and Regulations by the Constitutional Committee.

²⁴ Op cit Day

Accountability is provided because any Brother or Lodge may appeal any decision of the GM or Grand Lodge Board and a Brother can appeal against an action of his Lodge.

The Moral Laws of Freemasonry

In my view there are several elements to the moral laws of Freemasonry. One refers to the use of the Volume of the Sacred Law as a guide to faith and to a Mason's life and actions and is thus a fundamental reference for moral law – unchangeable and ancient.

The moral laws contained in that book may however vary from person to person depending on his religion or his perceptions and knowledge of this volume and thus could be considered to be ill-defined as a matter of Masonic Law which one would expect to be quite clear in meaning and appropriate equally to all.

Of greater definitional quality are the promises made in the obligations of each degree which contain some quite clear laws of moral behaviour and specify the penalties but, although they are equally applied to all members, these may be changed on the recommendation of the Ritual Committee and therefore do not have the permanence and stability that one expects of moral laws. Nevertheless as they are taken under oath they should be regarded as enforceable.

One should also include the ritual as a source of definition of some elements of moral law – particularly the working tools – but their wording is probably more liable to change by the Ritual Committee than the obligations. These moral laws are a matter of conscience.

The Ancient Charges, to which a WM-elect gives his assent, are also a basic reference for the moral law as they require adherence to the moral law, conformity to the laws of the country in which we currently reside, thrift and honourable dealing in private life, courtesy, and the promotion of the social virtues such as community service. They also call for loyalty to Masonry as a whole, and to our Lodge and Grand Lodge in particular. They are enforceable.

Accountability and Transparency

For a “secret Society” we are remarkably transparent. Few Freemasons today tend to hide their membership except in business or some public occupations such as the police or the legal profession or perhaps in some social groups where there is some history of anti-Masonic expression. Our Lodge rooms are sometimes opened for public inspection although some items, such as the tracing boards, may not be open. In New South Wales we are not required to report our meetings to civil authority as happens in some countries but our meeting nights are frequently displayed on Lodge notice boards.

General Masonic publications (except ritual books) are normally available and minute books of Lodges are often provided on request to non-Masonic researchers, although a dispensation may be required. Membership lists may be withheld on privacy grounds. The Masonic Library is open to non-Masons and the Records of Proceedings of Grand Lodge are available for readers.

However the Grand Master is not required to explain his actions nor is the Executive Council required to give the reasons for its rulings. Although the latter is, however, subject to appeal to the Grand Lodge, and indeed Grand Lodge can over-rule its regulations, but it cannot really be said to be an accountable or transparent body.

It is sometimes said²⁵ that the Grand Master has the prerogatives of a King and this is justified historically by reference to the members of Royalty who have been Grand Masters of the UGLE. But no King of England remained as GM after his coronation and, even if he had, he would have been subject to Magna Carta in civil life. Suffice it to say that when our Grand Masters issued edicts they have acted with ample prudence.

Natural Justice

The principles of natural justice are regarded by some as a set of free-standing principles which underlie legal procedure and consist of the right of a fair hearing and a rule against bias. They are normally inferred if not specified as set out in South Australia.

*“Unless the Act or other regulations under which a person is employed expressly, or by implication, forbids the application of what are called the rules of natural justice, the courts will infer that the Parliament intended those rules to be observed and, if in some action (such as dismissal) they are not observed, the action is of no effect.”*²⁶

An argumentative part of the right to a fair hearing is the right of a person sanctioned to know the reasons for a ruling against him. It has been stated that *“no single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions”*²⁷. Nevertheless this right is not often embodied in hearing procedures.

Clarity of Definition

Regarding clarity of definition, the major problem seems to be the definition of the ancient landmarks and, in consequence, the dilution of their significance. In defence, Edwards²⁸ claims that there is a case for a Grand Lodge not to *“enunciate more of the body of Masonic Law than any particular combinations of circumstances may require it to do so”* on the grounds that, in any society there are those who interpret things too literally and *“may thereby be led to work injustice”*. There is no doubt that many of the revisions of the Constitution and Regulations have helped to clarify their meaning but it is difficult to encompass all potential occurrences in legislation and revision is always a probability.

Balance of Power

Balance of power is an important ingredient in any organisation as power is capable of misleading the most well-intentioned person and checks and balances are necessary to ensure this does not happen. The devolution of decision-making power from Grand Lodge itself to its various Boards and Managers has progressed a long way since 1988.

This has changed from a position where the Grand Lodge officers could easily be outvoted by the Masters and Wardens assembled in Grand Lodge to a state where regulatory power is in the hands of bodies with few elected persons on them. Elected representation in decision-making is an important component of accountability.

²⁵ Op cit Edwards

²⁶ Handbook of the Legal Services Commission of South Australia

²⁷ *“Administration under Law: A Report”* Keith Frank Goodfellow ISBN 978-0-420-43710-

²⁸ *“The Law & Custom of Freemasonry”* Lewis Edwards Lewis Masonic Publishers Ltd 1948

Even in the earliest days the assembly of Grand Lodge members must have been large enough to create cumbersome debate and it is easily understood why issues for debate would be well-prepared and presented and probably limited to the most important topics. The inclusion of Master Masons meant that Masons with less experience were able to join the debate and vote and this must influence the choice of matters submitted for open discussion. The temptation to save time in Grand Lodge Communications is all too evident.

The approval of matters to be put before the Grand Lodge is in the power of the Executive Council²⁹ none of whom, except the GM, is elected by Grand Lodge. Therefore any checks and balances that are needed must reside within the various Boards and Committees reporting to the Executive Council. The best method to provide them is for an adequate number of members of these Boards to be elected by Grand Lodge and to know their allegiance is to the Grand Lodge itself and so that Grand Lodge has a sense of ownership over decisions.

Good management requires that Board members should have character, skills and qualifications that ensure their competence and objectivity. The changes to the Constitution have spelled out the need for experience and the areas where experience is needed on the Board of Management. Election processes do not necessarily guarantee that this result occurs and, although even Grand Masters can make mistakes with appointments within their gift, it is generally accepted that these mistakes will be less frequent and more easily rectified than if they are made by a vast assembly.

The practise has evolved whereby applicants for, say, the Board of Management, are rated after interview against a set of competency criteria and those deemed suitable are nominated to Grand Lodge for election. Quite often the number of names put forward to Grand Lodge is equal to the number of vacancies. It seems to me imperative that sufficient names are submitted to Grand Lodge to ensure that an election actually takes place so that Grand Lodge retains ownership over these elected appointments. "Election" means making a choice, not rubber-stamping a nomination. The Grand Lodge is the supreme ruling authority and those who usurp its rights will find themselves questioned, for what to one person is an act of expediency may be to another an act of contempt.

Of equal importance is the balance of power and influence between the elected or appointed Masonic leaders and the salaried staff of Grand Lodge some of whom are senior Grand Lodge officers as well. The salaried staff members usually have longer tenure and gain more intimate knowledge of subject matter. They also administer the detail and this takes time, care and money, the extent of which is sometimes not fully understood. They also prepare draft correspondence and thus need to interpret the wishes of Boards or committees.

It is difficult for even a Grand Master to achieve all he would like to in the normal period of his tenure (three years or so) in view of the needs of the administrative flow-on. Indeed the more ambitious he is for the Craft the longer and harder his task and the greater his need for full co-operation and support. "Yes Minister" was no mere comedy.

Conclusions

There can be little doubt that Masonic Law leaves something to be desired in terms of clarity of definition and permanence or its resulting Government in terms of representation, balance

²⁹ Constitutions of the United Grand Lodge of New South Wales and the Australian Capital Territory 1998

of powers, accountability and transparency, which were some of the original principles against which this paper was to meant to examine it. However, it does work quite well and has absorbed the changes it has sustained without major problems.

Nevertheless there is no doubt that continued scrutiny of the principles and regulations of our Grand Lodge is necessary to maintain the validity and continuity of our Craft. The Grand Lodge of Texas requires that

“all Amendments to the Constitution; all Masonic Forms; all resolutions proposing Amendments to the laws of this Grand Lodge; and all matters pertaining to Masonic Jurisprudence, and such other matters as this Grand Lodge of the Grand Master may decide, shall be referred to the Committee on Masonic Jurisprudence for examination, consideration and report thereon, before same shall be acted upon by this Grand Lodge³⁰”.

North Carolina has a similar Committee but the NSW Grand Registrar’s Committee is not charged with the same broad scope of responsibility to independently monitor all resolutions (although it may well do so). The fact that all members of the Grand Registrar’s Committee are appointed by Executive Council may ensure their competence and integrity but not their independence and this independence would materially improve the accountability of the Boards and executives of Grand Lodge.

This paper is but the ramblings of an amateur and it concerns only a small part of Masonic Jurisprudence. It is not intended to be critical of our Craft but an attempt at analysis based on principles normally applied to jurisprudence. It is obvious that our institution is not normal in this sense. It has changed substantially since its early beginnings – but it works well.

It is to be hoped that continued study by qualified people of our Masonic Law and the power structures that it creates can lead to an even better Masonic society by helping the members of Grand Lodge and its executive Boards resolve the many competing and complex affairs in which our members engage with harmony and profit.

Bro Armfield³¹, in discussing the need for constant review and potential amendment, reminds us that *“our book of Constitutions like all rules is for the guidance of wise men and obedience of fools”*.

³⁰ Grand Lodge of Texas – duties of the Committee of Masonic Jurisprudence

³¹ Op cit Armfield