

COMMON LAW CONSTITUTIONALISM AGAIN

– HIGH COURT PUBLIC LECTURE 2018

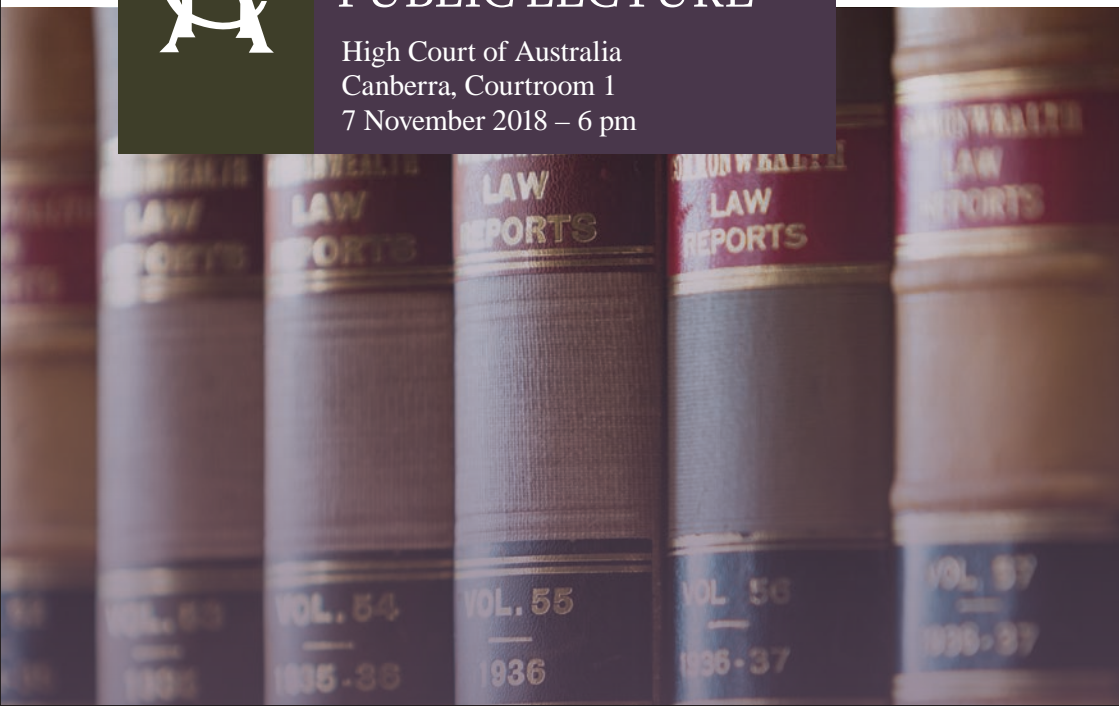
Introduced by Chief Justice Kiefel AC

THE RT. HON. DAME SIAN ELIAS, GNZM,
CHIEF JUSTICE OF NEW ZEALAND



HIGH COURT
OF AUSTRALIA
PUBLIC LECTURE

High Court of Australia
Canberra, Courtroom 1
7 November 2018 – 6 pm





The Right Honourable Dame Elias is the 12th Chief Justice of New Zealand and the first woman to be appointed to that office. She graduated from Auckland University with an LLB Honours Degree in 1970 and was admitted to the New Zealand Bar

the same year. She studied at Stanford University, from which she graduated in 1972 with a Master's Degree in Law. Following her return to New Zealand, Dame Sian worked first as a solicitor and then as a barrister in Auckland. In 1984-1989 she was a member of the Law Commission working particularly on the reform of company law.

In 1988, Dame Sian was appointed a Queen's Counsel. She appeared in a number of significant cases, including cases concerning the Treaty of Waitangi. She was awarded a Commemorative Medal in 1990 in recognition of services to the legal profession. In 1995, Dame Sian was appointed Judge of the High Court in Auckland. On 17 May 1999, she was appointed Chief Justice of New Zealand and was made a Dame Grand Companion of the New Zealand Order of Merit. The Chief Justice was appointed a Privy Councillor in 1999 and first sat on the Privy Council in 2001. When in 2003 the Supreme Court Act established a final Court of Appeal in New Zealand, the Chief Justice became the head of the new Supreme Court. That court began sitting in July 2004.

PRECIS

COMMON LAW CONSTITUTIONALISM AGAIN

Common law constitutionalism is in the air again. Recent decisions of the United Kingdom Supreme Court have criticised neglect of the common law since enactment of the Human Rights Act 1998 and attempted correction through application of common law principles in protection of fundamental constitutional values. In New Zealand, as in the United Kingdom, lack of a primary text makes recourse to the common law inevitable in describing the constitution. But even with the benefit of what Chief Justice French was pleased to call a "Capital C constitution", the common law jurisdictions of Canada and Australia determine constitutional questions in the context of the common law.

How far do shared common law traditions promote convergence in these legal orders? In the 2018 annual public lecture Dame Sian Elias explores constitutional directions in systems which are familiar but different. In them, divergence follows not only institutional differences in the manner and distribution of governmental power but the inevitable evolution of the common law itself over time and in adaptation to different conditions.

The superficial similarity of a history of colonisation and the presence of indigenous populations to accommodate in Canada, Australia and New Zealand obscures important differences in the legal orders which may not always have been observed in cross-jurisdictional borrowings. And federalism remains a "strange and exotic refinement" which shapes legal systems and constitutional thinking in ways difficult to fathom in unitary common law jurisdictions.



HIGH COURT OF AUSTRALIA

All welcome
Refreshments to follow

RSVP by 2 November 2017
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