

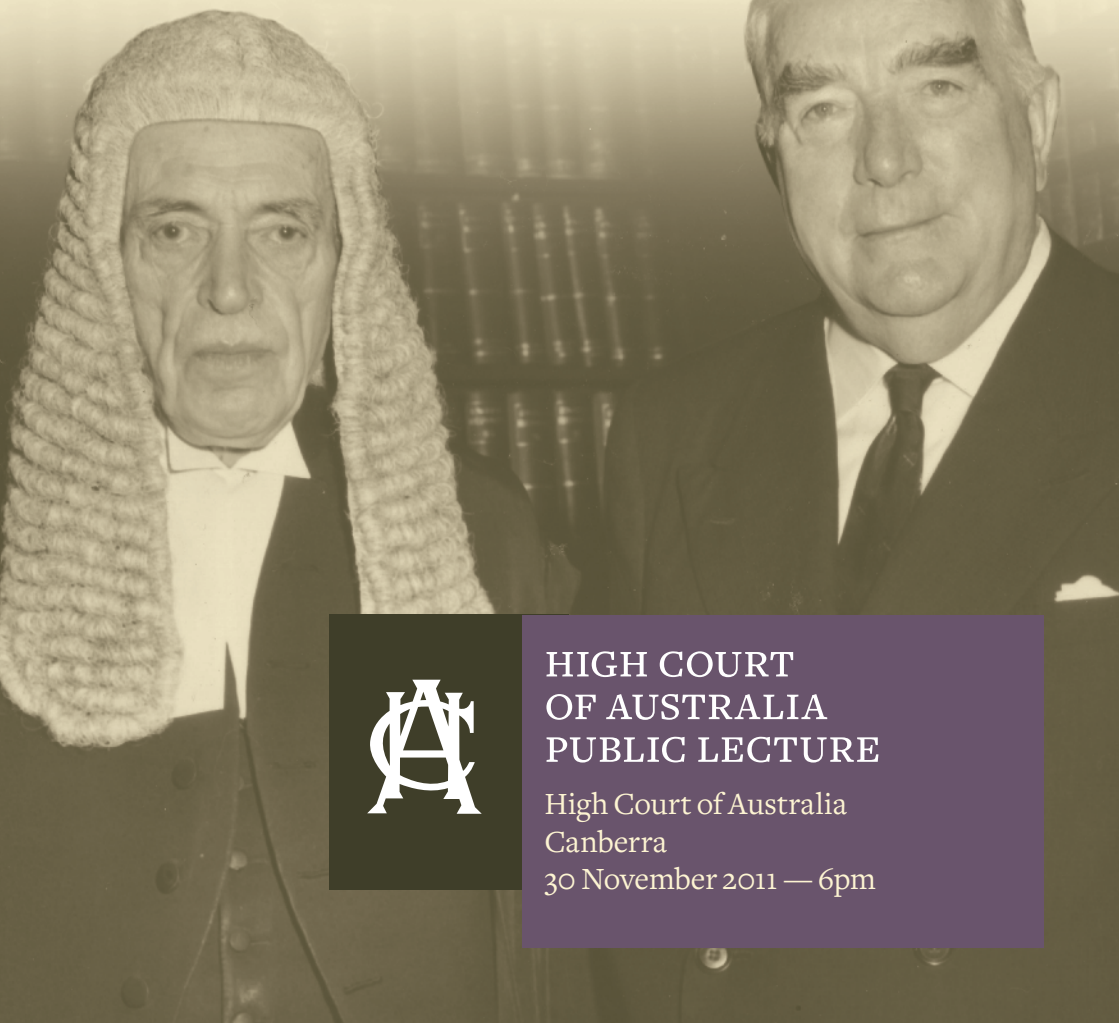
# *‘ANOMALOUS OCCURRENCES IN UNUSUAL CIRCUMSTANCES’?*

*towards a history of extra-judicial  
activity by High Court Justices*

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**BY PROFESSOR FIONA WHEELER**

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**HIGH COURT  
OF AUSTRALIA  
PUBLIC LECTURE**

High Court of Australia  
Canberra  
30 November 2011 — 6pm

COURTROOM ONE

High Court of Australia  
30 November 2011 — 6pm

# ‘ANOMALOUS OCCURRENCES IN UNUSUAL CIRCUMSTANCES’?

TOWARDS A HISTORY OF EXTRA-JUDICIAL  
ACTIVITY BY HIGH COURT JUSTICES

## *ABSTRACT*

THE INDEPENDENCE OF THE JUDICIARY FROM government is a fundamental feature of Australia’s democracy. It forms part of our common law inheritance and is embedded in the terms of the Australian *Constitution*, notably in Chapter III, under which the High Court of Australia is established.

Despite its central place in our constitutional arrangements, certain aspects of judicial independence, and the related doctrine of the separation of judicial power from legislative and executive power, have been contested and, to some degree, unstable. At different times in our history, different views have held sway about the appropriate division between the judiciary and the other branches of government.

One area that invites particular scrutiny in this regard is the participation by serving members of the High Court in activity outside the courtroom. In its first half-century, and in

contrast to contemporary practice, a number of High Court Justices ‘crossed the divide’ between the branches of government, serving in roles ranging from government adviser to, in the case of former Chief Justices Sir John Latham and Sir Owen Dixon, official Australian wartime envoys to Japan and the United States respectively.

How widespread was this extra-judicial work by Justices of the High Court in its formative decades? How appropriate was it? And what do these off-court activities—some largely forgotten today—have to say about the historical development of separation of powers and judicial independence in Australia?

*RSVP by 3 October 2011:*

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FIONA WHEELER is a Professor in the ANU College of Law, Australian National University where she is also Associate Dean. Prior to joining ANU, she was an Associate to Justice Mary Gaudron, High Court of Australia (1989–1990).

Professor Wheeler's research is primarily in the area of constitutional law, with a particular interest in courts and the judicial system, including separation of powers and the history of the High Court of Australia. She has published widely in this area, including as co-editor of the *Australian Federal Judicial*

*System* (2000) and a contributor to the *Oxford Companion to the High Court of Australia* (2001). Professor Wheeler's doctorate on the separation of judicial power under the Australian *Constitution* was awarded ANU's JG Crawford Prize (2000).

Professor Wheeler has served the ANU College of Law as Sub-Dean (2000–2003), Director of Research (2006–2008) and Head of School (July–December 2009). In the first half of 2009 she was based at the National Library of Australia as an Honorary Harold White Fellow. Professor Wheeler has been a member of the Executive of the Australian Association of Constitutional Law and is a member of the Australian Academy of Law.



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