THE HAMLYN LECTURES 2016

To be delivered by

Dame Sian Elias

Chief Justice of New Zealand

Golden Threads and Pragmatic Patches: Fairness in Criminal Justice

Lecture 1 –
Tuesday 8 November, 18.00 (17.00 Reception)
Venue: Cardiff School of Law and Politics, Cardiff University, Law Building, Museum Avenue, Cardiff, CF10 3AX
Registration: https://www.eventbrite.co.uk/e/the-hamlyn-lecture-series-2016-the-rt-hon-dame-sian-elias-tickets-26073996024

Lecture 2 –
Monday 14 November, 18.00
Venue: The Alumni Auditorium, The Forum, University of Exeter, Streatham Campus, Exeter EX4 4QJ
If you wish to attend please email: ssis-events@exeter.ac.uk

Lecture 3 –
Thursday 17th November, 18.00
Venue: Old Hall, The Honourable Society of Lincoln's Inn, London WC2A 3TL
Registration: http://bit.ly/29meLaJ

"Fair and Just"?

Chair: The Right Honourable The Lord Thomas of Cwmgiedd Kt PC QC
Lord Chief Justice of England and Wales

Righting Criminal Justice

Chair: Sir Stephen Sedley
Former Lord Justice of Appeal

"The Most Important of all Judicial Functions"

Chair: The Lord Lester of Herne Hill QC

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INTRODUCTION

The British model of criminal procedure and evidence is a principal legacy of Empire across the common law world. In 1963 it was possible for Lord Devlin to say of such adjectival law that "nearly the whole has been made by the exercise of the judges of their power to see that what was fair and just was done between prosecutors and accused." The distinguishing features of our shared system of criminal justice include the presumption of innocence, the privilege against self-incrimination and the associated right to silence, the exclusion of evidence improperly obtained or the admission of which would risk trial unfairness, severance of counts which cannot fairly be tried together, the right to consult a lawyer and to obtain disclosure of prosecution evidence in advance, and the right of those accused of crime to confront witnesses. They are principles which apply to the whole course of the criminal process.

The pull of inherited values and common ends has maintained much consistency throughout the common law world, although some divergence is inevitable between jurisdictions because matters of evidence and proof do not stand apart from the wider legal and constitutional orders and must be integrated with them. Such divergence may have picked up pace with severance of appeal links to the Judicial Committee of the Privy Council and with the need to keep criminal justice fit for purpose in each society.

In the past twenty years, public anxiety about crime and concern about the costs of delivery of criminal justice have led to close political attention to the law of procedure and evidence in a number of common law jurisdictions. It has resulted in substantial legislative reform and restatement of principles and rules. The shift to enacted rules governing criminal procedure is part only of the picture. It has been accompanied by institutional and administrative restructuring (including to criminal legal aid, the delivery of prosecution and defence services, and court administration) which has transformed the methods of delivery of criminal justice. These changes have come about at a time when intelligence-led policing and the capacity of modern surveillance may have caught the law flat-footed.

Although such changes might have been expected to result in further divergence between common law jurisdictions as they are developed to meet domestic priorities, there has been a good deal of re-convergence. In part that may reflect some international coordination (such as in response to terrorism) and the influence of international treaty obligations for the observance of human rights in the investigation of crime and determination of guilt. Common paths taken indicate a measure of agreement about current challenges faced in a number of jurisdictions. They include the costs and perceived ineffectiveness or inefficiencies of existing methods of criminal justice and their inability to adapt to meet changing social and political priorities in the treatment of victims and in the maintenance of security.

The solutions adopted include greater prosecutorial discretion in charging and diversion, wider use of summary trial, measures to incentivise early guilty pleas, relaxation of unanimity in jury trials, reverse onuses of proof, restriction of the right to elect trial by jury, adoption of preventive orders and "civil" penalties, application to criminal proceedings of modern civil case management measures, and measures to bring the victim into the criminal justice system, in a "triangulation" of the parties to whom fairness in procedure is owed. The effect has been a repositioning of criminal justice and the role of the judge in its administration. Further reassessment of methods of trial are on the cards, particularly in cases of sexual offending and where there are child complainants, and there are moves to ration procedural safeguards previously treated as universal. The basis on which the courts will intervene to provide remedies for breach of law in investigation of offending remains uncertain at a time when modern policing is pushing the limits in relation to the privilege against self-incrimination, rights to legal advice, and rights to be protected against unlawful or unreasonable search.

The lectures examine these themes and question whether the recent developments risk the integrity of the criminal justice system, fundamental human rights, and the rule of law.