

HAL WOOTTEN LECTURE 2012

Response to Lecture delivered by Sir Gerard Brennan

by

Hal Wootten

For the seventh year I have the honour of thanking the Faculty for giving me the opportunity to attend an eponymous Lecture that is not a Memorial Lecture, a situation in which, as you can imagine, I yearly rejoice. I stress again that the title is not only eponymous but metonymous, my name representing not just myself but the large and growing body of staff, students and supporters who have contributed to shaping, developing and sustaining the vision that nourishes this Law School.

It has been my hope that the Hal Wootten Lectures could provide a forum in which men and women who have lived lives in the law might tell of those lives, of the opportunities and satisfactions the lives have brought, thereby showing to students and young lawyers that it is indeed possible, as Holmes said, for a man or woman to live greatly in the law as elsewhere.¹

Sir Gerard has had a long and distinguished career in Australian law, rising to be Chief Justice

Sir Gerard did refer to *Mabo* in his Lecture, as an example of the High Court giving the law a little nudge in the direction the judges thought it ought to go. He was picking up a phrase I used in my 2008 Lecture, which I in turn picked up at the 1971 Australian Law Convention. In those days we couldn't have a conference without a visiting Law Lord. In opening the Convention, Lord Diplock observed³ that it is not often that there is an opportunity of saying as Lord Mansfield could, "the air of England

Given the way the newly recognized institution of native title was formulated, the actual effect on non-Indigenous property rights was minimal.¹³ Not one existing title was prejudiced. Yet there followed a period of the most extraordinary virulent, vicious and racist attacks not only on the decision, but on the judges who gave it and the Aboriginal people whose legitimacy in Australia the Court had had the temerity to recognize. These attacks were not by some fringe elements but by eminent businessmen, leading politicians, distinguished historians, knights of the realm, retired judges and senior lawyers – the great and the good who mobilized as guardians of the nation to denounce the 'gang of six' on the High Court who had betrayed it, and to ensure that the pernicious doctrine of native title was abolished by Parliament.¹⁴

I wonder what these critics would say of their extravagant language today, when everyone can see *Mabo's* modest effect on land titles and its beneficent effect on our race relations and, whether we are black or white, on our self-respect and feelings of legitimacy in our land. When the highest legal authority in Australia said 'there never was a *terra nullius*, a land belonging to no-one', it liberated both black and white. No longer need Indigenous people feel their legitimacy, their equality, their very humanity under question. No longer need the rest of us feel the legitimacy of our presence tainted by a lie, or feel diminished by the humiliation of fellow citizens whose legitimacy and equality were denied in our foundational doctrine.

So Sir Gerard, we not only thank you for sharing with us tonight some lessons of your life in the law. We thank you too for what you and your fellow judges did to liberate us from the past in your Mansfield moment twenty years ago.

¹ Oliver Wendell Holmes (1886) "The Profession of the Law", a Lecture to undergraduates of Harvard University, reprinted in Sheldon M. Novick, S M (ed.) (1995) *The Collected Works of Justice Holmes*, Vol 3, 471

² *Mabo v Queensland [No 2]* (1992) 175 CLR 1.

