

Mabo Oration 2023

The Mabo Oration 2023 was presented by Queensland Human Rights Commission and Queensland Performing Arts Centre on Friday 2 June 2023.

2023's orator was Professor Dr Megan Davis.

Her oration was followed by a panel discussion including Professor Davis, Professor Henry Reynolds, and Gail Mabo, chaired by MC Jeff McMullen which is transcribed below.

Professor Megan Davis, Professor Henry Reynolds, Gail Mabo and chaired by MC Jeff McMullen:

Jeff: Thank you, Megan. I'm sorry for the work that you put into that address and for giving us so much serious substance. Very briefly, Professor Henry Reynolds and Gail Mabo need no introduction. I want to ask you to reflect on what you've heard tonight. And Henry, the issue of the removal of children from their families and the acceleration of that rate of removal.

Clearly, from the evidence that we're hearing from Megan tonight shows that part of our governance is so badly broken. Do you think the Voice offers some hope to avoid another or ongoing Stolen Generation?

Henry: Well, I think the Voice has tremendous potential, there's no question about that. And the Uluru Statement in itself, I think, was a profoundly important constitutional document. Whatever happens, it will be one of the great documents - constitutional documents - in Australian history. One of the things that disturbs me is that no matter what happens, we simply are never going to return to the vote we had the referendum in 1967 of 90% plus. I suspect the Voice will get through with small majorities, but it does mean that a very large number of Australians are going to vote against it.

Now that's a deep concern and in so many ways it shows up what happens when the political parties take it up in order to achieve political victories which don't have all that much to do with the substance. Now, in particular, what people don't appreciate, I don't think, is other things that have been happening. I mean, in only a week or so ago, the Queensland Parliament passed the legislation for the creation of a treaty with the support of the major parties, including of all parties, the Queensland Liberal National Party. And the only people who voted against it were Katter, Katter's people and One Nation. So in Queensland, on an issue as significant as the treaty, you've got the major parties deciding to go along with it. At much the same time, in South Australia, they passed a Voice to Parliament in the South Australian Parliament, and that too passed both houses of Parliament, as I remember unanimously.

So, the extraordinary thing is that so much is being achieved, but with the major, I mean the leader of the major opposition party coming out and becoming more and more determined to try and scuttle it, we're going to remain a very divided community, even though I think the Voice will succeed and it will be extremely important. And indeed, on all of these issues, it will play a very, very valuable part.

But the process is not - I find it very hard to feel inspired by the campaign and the way it's developing.



Jeff: Gail, as you were listening and reflecting on the legacy of your father - when Megan spoke of this risk of abandonment, that what really comes with not being listened to, the deep pain that that causes - were there echoes of your mother and father's experience to you in that the struggle to be heard, but then being rebuffed, ignored, and often oppressed?

Gail: Yes, there is, because with Mum and Dad it was that whole thing of like living here in Townsville. We lived in a town that was - I call them frill neck lizards. There were many, many frill neck lizards that made it hard for them to achieve even the basic things, because I remember my mother going shopping and being pushed back and not being served.

And then my father was working as a wharfie and going to have a drink after the end of a day with - you know, the oh, what was that party? They were the ones that were actually standing beside Indigenous peoples to give them a voice - and when they went to, he wasn't allowed to have a drink. He was told to go to the ladies, to the area where the ladies had. So he went into the garden.

And he said, I'm not a woman, I'm a man. I want to have a drink at the bar. And so all I remember is Mum going looking at how much money we had because she had to bail him out of jail again because he got arrested for standing in a public bar. And so, you know, this is the fight in the belly of Indigenous peoples.


And it's not just our parents' story. There's many stories that would fill this room 12 times, maybe more, on just issues that we have just heard.

Jeff: Henry, remembering those years when Eddie walked in from the garden and you had those early conversations that here tonight, Megan brings us right back to that, that he felt he wasn't being heard, not being understood and so far from being recognised - what was his view of the fundamental sovereignty that is asserted so clearly in the Uluru Statement from the Heart? Never surrendered, always will be. And yet I hear the arguments about sovereignty being raised as an objection to entering the Constitution through the Voice. What would Eddie's guidance to us today be?

Henry: Yes, I've been very interested in the question of sovereignty. See, when I first started talking with him, he did not know or realise that he had a problem with his own land. He certainly supported Aboriginal land rights, but he didn't think his land it ever been taken away.

He initially said he came to Australia partly to try and understand why it was that white people had so much power. In other words, his primary consideration was the question of government and sovereignty, and it was only when he realised that he too didn't have any property rights whatsoever that that is what he took up. And I think he would have ideally liked the Mabo case to involve both property and sovereignty. But his legal team quite properly said, look, don't try and take that on, let's look at the question of property. And of course, that was that was triumphant.

Now the interesting thing is that that he had confidence in the law, enough to keep him going all those years, that in the end the law would find in his favour. Many people said to him, don't be ridiculous, the law is not going to change. But it was his ongoing confidence that the Australian law would actually understand. And to everyone's amazement - I mean, we forget that all this time during the eighties, when the Hawke government had initially set out to deal with land rights and gave it up and then talked in the Barunga statement about sovereignty and gave it up, that the politicians had failed, and they would have gone on failing.



But most people didn't know. Many people didn't even know what was happening in the High Court. And when the court came out with such a transformational judgment, you know, changing the law that had been there for over 200 years, they were astonished. But Eddie himself, as I, had confidence and I can remember talking to David Passi later and I said, you must have worried with the whole of the, you know, the Government and the Queensland Government against you. And he said, no. He said, I know that we had God on our side, and what is the power of the Queensland Government to the power of God?

So they were confident that the law would find for them, which it did.

Jeff: Megan, could we bring you in on this issue of sovereignty? Michael Anderson has concentrated on this issue in opposing Aboriginal people entering the Constitution with an argument that that would be surrender, that would be acquiescence. But I searched long and hard to try to find a case internationally where surrender of that kind changed anything much. So, what is what's your own legal understanding of this issue? If Aboriginal and Torres Strait Islander people hid under a rock, it would be different. But the assertion of sovereignty has been there not only throughout our lifetime, but from the beginning of time. So where does this issue legally sit in the international law?

Megan: I mean, as Henry knows, 1788 sovereignty is not what 2023 sovereignty looks like. But if you want to talk about, say, Anderson's argument, I don't think it has much truck because nobody first of all, the first point is nobody can cede your sovereignty except your nation. That's the purpose of treaties. That's why people enter into treaties, because there's some sort of shift in sovereignty - keeping in mind that treaties are only done by the British Crown. There's only really two or three countries where it's been done.

And so, there's nothing that's been done - since 1788, since the 1890s, or the 1901 constitution, since 1967, all the Australia acts, even the Mabo decision - that would have any significant change in the fact that people, First Nations people, have not ceded their sovereignty. That that's the legal position in Australia, that our people have not ceded their sovereignty.

Now how that issue gets belted out is not through the courts, because the High Court said on multiple occasions in Native Title cases, etc., that this is a matter for the Parliament and not for the courts. But it's - some say it's for treaty. That's where you negotiate shared sovereignty or coexistence of sovereignty. But that's for every nation across this continent to determine when they enter into treaties.

Um, so that's really the position in terms of international sovereignty. So much has changed since 1788. I mean, parliaments every day of the week cede their sovereignty to things like, you know, multinational or supernational institutions like the United Nations or private arbitration, many, many things like WTO agreements, which try to bind parliamentary sovereignty in relation to things like public health and public good. Sovereignty just isn't what it was in 1788, which makes treaty really interesting.

And if I can just pick up on Henry's point about Queensland treaty, I think that the Opposition Leader supported it because it's so weak and because, you know, not long after being prompted by his national colleagues, he's saying he won't support reparations. So, what's the treaty process if reparations aren't at the table?

But I think, you know, it's an important point to keep in mind. But the way treaty has evolved in Australia means all of these treaties are going to be ordinary acts of parliament. What that means is they can be overridden by the Commonwealth whenever the Commonwealth wants to. There's three provisions in the Australian Constitution that means that the Commonwealth



can come over the top and undermine or disallow provisions of any treaty that it likes because it can, because it is constitutionally superior to state parliaments.

And I think that's a really important point to keep in mind about the Uluru Statement and the idea of a Makarrata Commission. If you don't have the Commonwealth at the table, you're not going to have a robust treaty. The other problem with treaty, given they're so vulnerable - so that they will be an ordinary act of parliament - they're so vulnerable to override that... just lost my train of thought.

But I think we need to keep that in mind when we contemplate what's happening in Queensland. Most treaties are being developed by state Labor governments and most fall over when the Liberal National Party is elected at the next election.

I think one of the most important things to remember about Queensland treaty is that it happened after Jackie Trad took a paper to Cabinet to show them the liability of the Queensland Government to Traditional Owners under the Timber Creek decision in the High Court. It's billions and billions of dollars and treaty is regarded as a way of minimising and reducing that debt to those T.O's. So, the detail will be in the treaties that people sign.

But we are a long way off, a long way off, getting anywhere close to treaty in this country. The most, I guess, robust process right now is Victoria. They've passed their treaty framework, which is just a piece of legislation that sets out what will be negotiated over the course of the negotiations. I mean, it took British Columbia up to 20 to 30 years for their first treaties to emerge. Mick Dodson says in the Northern Territory it's going to take 20 years.


So, I think in talking and thinking about what's going on at a state and territory level, that the Commonwealth - so the Voice, Makarrata issue, Uluru - and the state and territory business, they're really important to work together because if you don't have the Commonwealth in a kind of robust position for our people, then the state and territory stuff is bound to fall over.

Jeff: Gail, Megan raised in the Mabo Oration another very concrete example of the ongoing discrimination in the way that the system works. And she touched on superannuation, which a lot of non-Indigenous people would probably never consider how unfair that approach is. But you could go on through the work of the Queensland Human Rights Commission and examine the other issues and you realise that Aboriginal and Torres Strait Islander people often struggle to even get the fundamental legal advice to know how to go about taking up a write or fixing a problem. And the ombudsman in every state, you know, deal with these kinds of issues. So, it struck me that when, going back to when Christian Porter was Attorney-General and he took all of the money for Legal Aid, put it into one bucket, and it meant down at the community level, in every city and smaller community around the country, Aboriginal Legal Aid began to wither.

I'm sure you hear case after case of people that need a lawyer and the legal aid centers really dealing with Aboriginal and Torres Strait Islander nightmares that they've got to go through that legal system, just can't get the advice. Would you think that maybe having a Voice could begin to focus on that kind of entanglement and move the money to where the aid and the lawyers are desperately needed really to sort out some of this mess?

Gail: Well. Well, I have a personal connection to actually needing legal aid. And it was that thing of like they kept saying, we can do this case for you, but we have no money, you have to pay it out of your own pocket to do whatever you need to do. And for me, that was okay. I could do what I needed to do.

But then I look at, you know, other people who are in the room, who are struggling, who are - you know, single parents. Some of them are just - they don't have any money, but they



need to fight a system that is not going to be there for them. And so, for me, if we step into this conversation, we have to make things better for all, not just, you know, look at this little bit, this little bit, this little bit. It is a big bucket of many issues. And, you know, we have to protect also those vulnerable people. The vulnerable people are the ones who are still not understanding what it is that needs to happen. And so, for me, it's that whole thing of like, let's educate those, like with forums like this, because Megan did a wonderful job of actually swaying me to go, you know what? I'm going to say yes.

Jeff: Yes. Henry, were you swayed?

Henry: I didn't need swaying. But what I wanted to compare - I mean, to bring us back to the Mabo case. Now, what people probably don't realise is what an important effect that had on Australia's reputation overseas. There's no doubt about that. And Megan would know this, but I talked to people - I mean, talked to Mapuche Indians in Santiago in Chile, talked to Sami people in northern Norway, talked to people I knew, spokespeople in Tokyo, talked to the Chief Justice of Norway - right across, they were both interested and impressed by what had happened in the Mabo case. And Whitlam, more than anyone else, emphasised how important this was. Now, he had said on many occasions that the one thing from his travelling all over the world, the one thing that really everywhere people judged Australia by was the way we dealt with our Indigenous people.


Now I don't know whether everyone appreciates that when Australia was starting to bid for the Olympic Games in Sydney, they were concerned that they wouldn't get it because they were against Beijing, because we usually got no votes in Africa. And so Whitlam and Margaret Whitlam and John Coates and several other people went on a barnstorming tour of Africa - 30 days, about 12 countries.

And Whitlam told me, he said, look, everywhere we went they said, well, why should we vote for you? What can you tell us about your treatment of the Aborigines? And this was just after - this is in 93 - and Whitlam said, I was able to tell them about the Mabo judgment. Now there is no doubt, he said the reason why they got the Olympic Games is we shifted some African votes from China to Australia because of Mabo. So, I remember long ago, just after the case there was a, a t-shirt that people wore that said Captain Cook took stole our land, Koiki Mabo got it back. Well, I think Koiki Mabo also got us the Sydney Olympics.

Jeff: in that spirit, because we have come to the end of our time. I would like to share with you a reflection. For more than 20 years, AAIDA the Aboriginal Australian Indigenous Doctors Association, have really been focused on one thing: the well-being of all of our children. And just this week they decided in their collective wisdom to say yes for the Voice.

And the process was the same as has happened in my family. Everyone has a right to argue fiercely, respectfully. And so, the AAIDA doctors who I think are a brilliant group, a very hopeful group, a very unifying approach, that we need wellbeing. And out of that, we don't get the abandonment that Megan spoke about tonight. We don't want that to come out of this process. We don't want hate and anger and abandonment. We do want healing. I've listened to that and learned from those brothers and sisters that decided this old man should be a patron of their work.

I could only share that and say they inspire me. And in my family, we go around the table, and we put all of the issues. So, I've got a sustainable futures son and a lawyer/journalist daughter and a wife that worked in the White House, and when we argue, it is on. But we will all be supporting the Voice because it is an opportunity - the first we have in the 21st century - to draw on the wisdom of our elders, those that came before us, and to truly hear the



country sing to us in the beautiful way that everyone here tonight has performed, from your words Megan, to the smoking from William at the outset, and the singing from Vicki, and the dancers, have all taken us to that place. Let's argue, but let's also come together.

I'd like to, on behalf of the Queensland Human Rights Commission and the Queensland Performing Arts Centre, thank you all. To those of you that have travelled from other parts of the country to be here to hear Megan Davis and this Oration in Koiki and Bonita Mabo's community where they lived and worked so hard for so many years.

Could you please thank once more Henry Reynolds, Gail Mabo and Professor Megan Davis.