

The Australian Women's Register

Entry type: Person
Entry ID: AWE5422

Hocking, Barbara

(1928 - 2013)

Born	19280628, Melbourne Victoria Australia
Died	20131206
Occupation	Barrister, Lawyer, Solicitor, Tribunal Member

Summary

Barbara Hocking graduated in Arts/Law at Melbourne University in 1962 and quickly demonstrated her life-long commitment to social justice issues, particularly Indigenous land rights. She completed her LL M degree at Monash University in 1970 focusing on this topic. Barbara was admitted to practice in Victoria in November 1975 and in the ACT in December 1975. She signed the Victorian Bar Roll in March 1976 and read with Leonard Ostrowski, later QC and a Judge of the County Court.

In 1982 Barbara Hocking became the first barrister briefed in the Mabo case which would finally right the legal fiction of 'terra nullius' and recognise native title in common law. She was a long-standing and active member of the Australian Labor Party and maintained her political commitments until her death. In 1986 Barbara became a Senior Member of the Commonwealth Veterans Review Tribunal and Chairperson of the Medicare Participation Review Committee, and in 2004 she was appointed to the Victorian Honour Roll of Women.

Go to 'Details' below to read a reflective essay written by Barbara Ann Hocking and Jenny Hocking about their mother for the Trailblazing Women and the Law Project.

Details

The following additional information was provided by Barbara Ann Hocking and Jenny Hocking and is reproduced with permission in its entirety.

PREFACE

'If ever I need a good lawyer I'll get you, you're terrific!' These were the words of a kindly social worker to our mother, Barbara Hocking, following a harrowing 'discharge meeting' at a Melbourne hospital, to determine the residential fate of our aged father. Our distressed 85 year old mother had argued powerfully and passionately before a barrage of decision-making hospital staff, and rogue family members jostling for power, as her husband of over 60 years was taken from the family home against her wishes and placed in managed care. Within a week of this unforgivable final injustice our mother suffered a fatal stroke, dying just 3 weeks later, on 6 December 2013.

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Our mother's life's work had been spent in the pursuit of justice, rights and equality before the law, specifically for indigenous land rights through the recognition of native title in common law. In this singular goal Barbara Hocking's body of legal reasoning, her writings and her work with the plaintiffs in the Mabo case, was profoundly significant and highly original. It was also, with the High Court's historic Mabo decision in 1992, ultimately successful.

CHILDHOOD

Our mother was born Barbara Joyce Browning, on 28 June 1928, into a family marked by her parents' acrimonious divorce which scarred her childhood and of which she rarely spoke. She drew upon her close relationship with her brother Billo, together with her love of books, study and dogs, to provide her with great comfort in often difficult times. In one of the many incongruities of her long life, some of Barbara's happiest childhood memories were experienced during the Second World War when, with the contingencies of war, the family shared a house with several aunts and numerous cousins. Barbara revelled in this extended family life with noisy children, dogs and loving aunts, even as they were all too aware of and concerned by the absence of men in their day-to-day lives away at the war.

STUDYING LAW

In 1947 Barbara Hocking began an Arts/Law course at Melbourne University and moved into University Women's College, thriving in the close almost family environment and making life-long friends. These women, whom Barbara first met during her university days, remained an important part of her life and they continued to meet over lunch for decades to come, still calling themselves 'the University Women's College girls' even into their 80s.

It was also at University that Barbara met the man who would become her life partner, Frederick Hocking, who was then studying medicine. Fred's war-time experience had contrasted markedly with her own. He had enlisted with the RAAF at the age of 18 having already lost his best mate who had enlisted as an under-age recruit. Fred had left school at the age of 14 and had been a grateful beneficiary of Labor Prime Minister John Curtin's post-war Commonwealth Reconstruction Training Scheme which enabled him to return to school after the war and to begin a medical degree at the University of Melbourne. Fred and Barbara Hocking were married on 18 May 1951.

With an impressive undergraduate program of 4 years of her law studies completed, Barbara's studies were interrupted by the arrival of four children within ten years, before she was even thirty years old. She did not forget her love of study and of the law and, with 4 children under the age of 10, showed her trademark determination and returned to university to finish her law degree. If it was unusual for a woman to be studying law in the 1940s, it was even more unusual for a woman with four young children to be finishing her law degree more than 10 years later. But this she did, and in 1962 Barbara Hocking graduated with Arts and Law from the University of Melbourne.

For decades, Barbara put her husband's career first, supporting him through a year's sabbatical working on a Doctorate in Medicine in 1964, which year was spent, with the four children in tow, in the quintessentially quaint village of Woodstock, living in a large old English stone house opposite Blenheim palace and its wonderful gardens designed by Capability Brown which, as a keen gardener herself, Barbara loved. Both Barbara and Fred embraced the English pub tradition, becoming regulars at the famous Bear Inn in Woodstock with local friends. It was a time of challenge for both of them and Barbara, incongruously enough again, taught mathematics (of which she admitted to knowing little) at the local secondary school and began a brief career as a lollypop lady, showing children safely across the road to and from the village primary school!

THE GENESIS AND AFTERMATH OF MABO

On her return to Melbourne, Barbara resumed her law studies and began a Master of Law at Monash University. Fuelled by what she perceived to be a neglect of Indigenous property rights in the law curriculum, coupled with a neglect of colonial legal history that would explain the incorrect application of the doctrine of 'terra nullius' to Australia, she completed a preliminary MA thesis at Monash University on 'Aboriginal Land Rights: An Australian Injustice'. In 1971 Barbara Hocking was awarded an LLM, also at Monash University, for her ground-breaking thesis Native Land Rights. With the academic legal groundwork done, she commenced work on what was to be the most rewarding part of her career in the law and began what has since been recognised as a body of work of the greatest legal and political significance. In those theses, and in her books, articles, reports and conference papers over many years, Barbara presented what was then an unprecedented argument, later vindicated by the High Court in its historic Mabo decisions, concerning the recognition at common law of a form of native title ownership in Australia.

In September 1981, Barbara Hocking presented a paper at a Land Rights conference at James Cook University, Townsville. The conference, Land Rights and Future Australian Race Relations, was organised by the Townsville chapter of the Aboriginal Treaty Committee and co-chaired by Eddie Mabo and Professor Noel Loos of James Cook University. Barbara Hocking's paper, subsequently published in Olbrei, (ed) Black Australians, was entitled 'Is Might Right? An Argument for the Recognition of Traditional Aboriginal Title to Land in the Australian Courts' and argued that a case should be taken to the High Court of Australia in pursuit of the recognition of native title in Australian common law. In this powerful and prescient piece Barbara propounded that the High Court be asked to determine whether indigenous Australians had a 'just and legal' claim to their lands, to overturn the specious notion of 'terra nullius' (embedded in Australian law since the Privy Council decision in *Cooper v Stuart* in 1889) and that it was time for the common law to be 'put to rights'. Even if such a case were not to succeed, Barbara argued, it would surely serve as a catalyst for political action: 'A test case brought by a group of Queensland Aboriginals who still live on their tribal lands, could influence the attitudes of white Australians It might for example lead to the establishment of a Court of Claims and an Aboriginal Claims Commission.'

At the conference Eddie Mabo and Father Dave Passi – the two lead plaintiffs in what became known as the Mabo case – then gave instructions to Barbara Hocking as barrister and solicitor Greg McIntyre to pursue precisely such a case in the High Court, to establish recognition of traditional rights to land in Australian common law. Barbara well understood the potential significance of this case and for the next ten years it would be the central goal of her legal work as she made the Mabo case the highest priority in her practice at the bar. The writ and the statement of claim initiating the case were issued in the Brisbane Registry of the High Court in May 1982 on behalf of the plaintiffs Eddie Mabo, Dave Passi, Sam Passi, James Rice and Celuia Mapo Salee. Barbara prepared the first draft of this historic statement of claim which drew heavily on her expertise in indigenous land rights, law and tenure, especially in the framing of the legal issues, all guided by her deep academic knowledge of this area of law.

Barbara Hocking appeared in the High Court as a member of the plaintiffs' legal team to argue what became Mabo (No 1). The High Court's Final Judgment, in Mabo (No 2), was handed down on 3rd June 1992, finally recognizing a new property right, 'native title' in common law. The High Court judgments essentially accepted the arguments put forward in her work including her 1988 book *International Law and Aboriginal Human Rights*. She had begun this work at a time when such an analysis was politically and academically new and challenging and she was to see her interpretation of the law in this area achieve mainstream acceptance. What drove her was a concern for justice and human rights and a fundamental belief in the law – specifically that the previous application of the law was simply wrong and that it should be, in her words, 'put right'. She was overjoyed when then Prime Minister Paul Keating took carriage of the implications of the historic Mabo decision and risked his political career to bring about the Native Title Act 1993. As Barbara's Canadian colleagues, Professor Peter Russell and Professor Wes Pue remarked: her intellectual input was indeed 'terrific'. Regretfully, the 'principle hero' of the Mabo case, Eddie Mabo, died before the High Court handed down its decision.

In 1992 Barbara Hocking, along with the five plaintiff's in the Mabo Case, was awarded the Australian Human Rights Medal by the Human Rights and Equal Opportunity Commission paying tribute to her foundational role in the recognition of native title and for 'her contribution to the Mabo case and...work over many years to gain legal recognition for indigenous people's rights.' She later described this as her 'professional life's work.' Barbara was honoured again the following year when she was awarded the inaugural Monash University Distinguished Alumni Award for her 'visionary groundbreaking work on aboriginal land rights [which] was, through the High Court of Australia's Mabo decisions, recognised as a body of work of immense legal and political significance and an important milestone in Australian history'.

Among the highlights of her role on the Mabo case, she later told ABC Radio, was a visit to the Torres Strait Islands, meeting the Torres Strait Islander plaintiffs, their community and their families. Barbara was to look back on those halcyon days with great pride and fondness, retaining a life-long interest in the role of law in pursuit of justice, never losing faith in law's transformative role, and retaining the faith and spirit to argue the case for justice even up to the month before her sudden death.

Terrific indeed!

Events

2006 - 2006

Inducted into the Victorian Honour Roll of Women

Published resources

Resource

Trove, National Library of Australia, 2009

Review

Review of Peter H. Russell, Recognizing Aboriginal Title: The Mabo Case and Indigenous Resistance to English-Settler Colonialism, Pue, Dr W. Wesley, 2005

Site Exhibition

Australian Women Lawyers as Active Citizens, Trailblazing Women Lawyers Project Team, 2016,
<http://www.womenaustralia.info/lawyers>

Author Details

Barbara Ann Hocking and Jenny Hocking

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