MABO - A FUTURE FROM THE PAST

In 1982, Mr Eddie Mabo commenced legal proceedings against the Queensland Government claiming native title to the Murray Islands in the Torres Strait. The Government of the time, infamous for its jaundiced view against the Aboriginal and Islander people, attempted to frustrate this action by enacting legislation called the Queensland Coast Islands Declaratory Act. In 1988 the High Court of Australia determined that this legislation was unlawful in that it violated the principles of the Racial Discrimination Act. In 1992 the High Court established the existence of native title in the Murray Islands. As the High Court determines the law for Australia, to which Australian State Governments must conform, this decision was to have broad ranging implications to jurisdictions beyond the Queensland border. The essential feature of the Mabo determination is that it rejected the flawed premise that native title was extinguished by the acquisition of territory through sovereignty at the time of European invasion.

Some State Governments in Australia have been keen to allay fears that the decision would interfere with freehold and leasehold land held by ordinary citizens. Others have adopted a different approach fuelling concerns within the community. The word "divisive" has been used to describe the divergent approaches pursued by the various Government leaders. Their comments have not generally been useful - nor has the reporting of these comments in the Australian press.

The decision of the High Court provides a great challenge and opportunity for Australia - one which demands the implementation of a cohesive and cross-political party strategy that remedies the less than impressive response to Aboriginal and Islander issues in the past. Successive governments at both a federal and State level have denied access and opportunity for indigenous Australians who were, and are, the original custodians of this land. There are clearly many within the community who feel significantly threatened, in my view illogically, by the implications of the High Court decision. The case for the validation of native title for Australian Aboriginals is, by way of example, quite onerous. The existence of native title is governed by two considerations:

i) whether there has been an extinguishment of native title by a lawful act, and;

ii) whether the relevant Aboriginal or Islander people have maintained a continuous connection with the land. This is determined by the laws and customs of the relevant group. Membership of a group depends on biological descent and on mutual recognition of membership by persons enjoying traditional authority within the group. Native title is extinguished if a group loses its connection with the land by ceasing to acknowledge the laws or observe the customs of the group, or on the death of the last member of the group.

The difficulty for Aboriginal and Islander Australians, it would appear, in substantiating a continuous connection with the land will be profound, particularly in those instances where government paternalism (and expediency) led to the relocation of entire Aboriginal communities to "missions" removed from the land to which connectedness could be established.

The history of white Australia in its dealings with Aboriginal and Islander Australians is riddled with the cancer of intolerance and bigotry, from the systematic annihilation of the race in Tasmania to the genocide of the race and culture across the continent. Let us never forget the outrageous treatment of Aboriginal Australians and Islanders by the Bjelke-Peterson Government and others in removing their status as citizens and appointing "protectors", forcefully removing children from their families, directing their finances, denying them the vote (until 1967!) and in the callous disregard for culturally significant sites in the quest for mining dollars.

The Mabo decision is not about a "land grab" by Aboriginal and Islander Australians. It is simply a recognition that culturally significant and distinct races of people inhabited Australia before 1770. The response by government and the community to this fundamental reality will reflect our maturity and shape the perception of Australia to our non-European neighbours.

Whilst we, the collective Australian community, seek out equitable and fair methods in the implementation of the law governing native land title it is imperative that the debate not disintegrate further into a political or economic bunfight. We, the Australian citizenry, do not need to have the important debate upon us deflected by the mouthings of opportunistic politicians nor economic rationalists with spurious agendas bent upon crushing the spirit of the Mabo decision. Australian Aboriginals and Islanders have always had the historical right to this land. Before Mabo, this was simply not recognised. They were, and are, the first Australian community. Their motives for asserting a fundamental right to participate as equal partners in the management of this country are, I believe, more honourable than those who are seeking to divert attention from the essential elements of this debate. The future of relations in this country is bound by our past. A logical and reasoned approach now will benefit all citizens in our future.

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