

## Decline and fall of a worthy compromise

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*The Prime Minister's 10-point Wik plan means the death of gains won in the High Court Mabo decision, writes **Noel Pearson***

NOW that Senator Brian Harradine has decided to support Prime Minister John Howard's 10-point plan in the Senate, Australians might pause to reflect upon the historical meaning of this impending betrayal of the Aboriginal people by their Federal Government. Before we drowned it under a morass of legal terminology, Mabo was in fact a simple story of a compromise put forward by the High Court on that most neglected of our national dates: June 3, 1992.

After six years of "too much Mabo", while the controversies of native title have hardly departed from national headlines, most Australians still do not understand the meaning of native title .

Tragically, even Justice Michael McHugh of the High Court is reportedly sick of Mabo and may have had cause to regret his original decision.

Amid the depressing political tragedy in Canberra, let me retell a story I have told thousands of Australians over recent years; how the Mabo decision proposed a fair settlement of the key issue that stands unresolved between old and new Australians - that of title to the soil.

Compelled to discard the fiction of terra nullius -that somehow Aboriginal people were not humans who owned their homelands -the High Court also had to deal with 204 years of colonial history, a history involving the grant of millions of land tenures to the new Australians and their descendants, and the consequent dispossession of the old Australians who once held title to all corners of the continent.

The challenge facing the High Court judges in the Mabo case was this: How was Australia going to recognise the concept of native entitlement to land after 204 years of denial? How was original truth to be reconciled with the plain facts of history? This history involved the accumulation of numerous titles, while the new Australians gained their wealth and livelihoods from the land and they had imprinted their own story on the land. Indeed, many of them grew to love the land and, yes, feel indigenous to the land.

Under its Mabo and Wik decisions, the High Court, unconsciously perhaps, proposed a three-point compromise plan under the country's rule of law: A compromise to settle the fundamental issue of land grievance between old and new Australians.

The first point of the compromise plan for the High Court was to confirm unreservedly all of the rights of the new Australians. They would be entitled to keep all of the land to which they held title. It could not be taken from them.

This was, for the benefit of the current far Right of Australian politics, the "white land rights" part of the compromise.

The second point was to allow the old Australians to finally enjoy their native title to whatever land was left over. This was the unwanted land that had not been granted to the new Australians over two centuries. This was the "black land rights" part of the compromise.

The third point was to allow old and new Australians to share the vast pastoral leases and government reserves. In other words, for the old title and new title to coexist. And the High Court said that the following rule applies to the sharing: the new always prevails over the old if there is a conflict.

This was the High Court's three-point plan for compromise. Who could disagree with this plan for peace? How could a more commonsense and fair balance have been struck than this? The new mob would keep all of theirs. The old mob would get the leftover bits. They would both share the bigger lease lands and reserves.

The Liberal and National parties, and particularly Howard, have never accepted this simple Mabo compromise.

They have always said that native title took away from and threatened new Australians. They have always said that the pendulum had swung too far in favour of the old Australians.

So they constructed a 10-point plan to develop their own version of compromise; to change the rule of law so that new Australians could take some more of what was supposed to be left over for the old mob -to reject the ideas of coexistence and sharing put forward in Wik.

While Harradine has tried valiantly to stop the 10-point plan from utterly destroying the Mabo compromise, the truth is that the 80 per cent of losses sustained by the old Australians mean that the benefits and protections of the rule of law have been denied them. A new law will be put in place by Howard.

Workability of the machinery of native title legislation was always going to be an issue that needed to be fixed. But Howard's plan only half deals with machinery -the other half takes from the old and gives to the new. Greed, to put it simply.

The historical implications of this country destroying the Mabo compromise are absolutely tragic. How can we, as Australians, lose the Mabo compromise so lightly, when we know this kind of grievance never goes away? That bitterness from betrayal never subsides?

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