

Legal effects of the mabo case in australian law



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The Mabo cases are some of the most well known cases in the Australian legal system, this paper will focus on the Mabo v. Queensland, a case that was litigated over for almost a decade in the Australian high court, this case was a monumental step for indigenous people in Australia. From the colonisation of Australia by the British in 1788 The native Australians (Aboriginals) have fought to claim back their land, but it was seen by the first Australian colonists that Australia was “ terra nullius” and therefore the indigenous people had no claim to land rights. There are many different points that need to be addressed before we can show that the legal effects of the Mabo case have turned out to be deceptive.

The Mabo cases were seen by many people in Australia as a victory for indigenous people throughout Australia, but for some indigenous people it was not seen in the same light. A long battle between the indigenous people and the commonwealth had be going on since the first settlers had arrived in Australia and claimed the land as “ terra nullius” (un-inhabited), even though Australia was clearly not un-inhabited. The indigenous people of Australia had a long and devoted relationship with the land and had set-up their families and homes on this land.

In 1982, Eddie Mabo began an action for a declaration of native title over the Queensland Aboriginal land claims. They argued that terra nullius had wrongfully been used by the settlers that colonized Australia, because for thousands of years indigenous Australians had enjoyed a relationship with the land that included a sense of ownership.

In 1992 the High Court of Australia rejected terra nullius and the myth that the first settlers had used to deprive indigenous Australians of their land. In doing this, it recognized that native title existed before the arrival of the first British colonists.

The judgment became known as the Mabo decision, one of the most controversial decisions ever seen in an Australian court. It was a decision that was quite hard to fully comprehend, as there was no definition to which native title existed in Australia. Mining and other industry groups were not happy with the decision as it would take more time and money to gain leases on land and their applications may also be denied, but was celebrated by indigenous Australians and Paul Keating (prime minister), as an opportunity to apologise to indigenous Australians for the treatment they received and the taking of their lands.

The Mabo decision in the high court awarded certain land rights to indigenous people, which were celebrated by some, but the terms and conditions that went along with the final high court ruling did not benefit all indigenous and had some negative effects on the indigenous, there are many requirements that must be met in order for an indigenous person / persons to claim rights to land in Australia, which some people see as unfair.

For a long time before the first settlers came to Australia Aboriginals have inhabited what they called " Mother Earth" and there was a strong bond between the aboriginals and their land that they raised their families on, hunted on and built their homes on. The aboriginals roamed the whole of their country as they pleased and had many different sacred sites throughout,

sites which had a link to their ancestors and what they called “ the dreaming”, then in 1788 all of what they know and respected was taken from them by “ the white man”, the first settlers had arrived from England and had claimed that land, that the aboriginals had called home for so many centuries, “ terra nullius” (un-inhabited).

With the arrival of the first settlers came with them a system of laws and government that had never been seen by the aboriginals. Laws and government that did not benefit the aboriginals in any way shape or form, laws that took away their land and left them with nothing. The indigenous people in Australia have suffered in different ways and forms from the days of the first settlers and have fought to claim back what many see as rightfully theirs, their land and their rights to own land and live, hunt and follow the way their ancestors lived on/ from the land.

There have been many attempts by the indigenous to claim back their land and the MABO v Queensland is just one of many. Many of the land rights battles were started by the Milirrpum & others v Nabalco Pty Ltd (1971), the Yolnga people brought an action against the Nabalco Corporation which had secured a twelve year mining lease from the federal government, ATNS. (2003), the argument was that the federal government had no right to offer a lease to the lands as they belonged to the aboriginal people.

Justice Blackburn stated that native title was not part of the law of Australia and went on to add that even had it existed any native title rights were extinguished, ATNS, (2003), the rights of the indigenous were not heard until nearly two decades later when Justice Blackburn’s decision was overturned

in the MABO & others v Queensland & others case, the indigenous peoples rights were considered for the first time since the colonization of Australia, Cullen, R. (1990).

With the overturning of Justice Blackburn's ruling the indigenous people of Australia have finally been given some legal rights to be able to claim some of their land back. But with these rights come quite a few guidelines and requirements that have to be met for an indigenous person to be able to make a claim to land in Australia, some of which in the Northern Territory include, under the act the only land claimable is un-alienated Northern Territory land outside town boundaries, land that no-one else owns or leases, usually semi-desert or desert, also claims have been known to take a large amount to be decided and are often rejected by the government and Aboriginals must also prove to the government that they have a lawful claim to the land and that under their Aboriginal laws that they have a responsibility to sacred sites that they are trying to claim, Australiatrek. com. (n. d).

Other states such as South Australia have different guidelines and requirements that have to be met in order to claim land some of which include the Pitjantjatjara Land Rights Act 1981 South Australia This gives Anangu Pitjantjatjara and Yankunytjatjara people title to 10% of South Australia. The land, known as the Anangu Pitjantjatjara Lands, is in the far north of the state. Just south of the Anangu Pitjantjatjara Lands lie the Maralinga Lands, this area was largely contaminated by British nuclear tests in the 1950s, this land in South Australia was returned to its Anangu

traditional owners by virtue of the Maralinga Tjarutja Land Rights Act 1984 South Australia, Australiatrek. com. (n. d).

To define native title, parliament passed the Native Title Act in 1993. Despite the mining industries anger, the act gives indigenous Australians very few new rights. It limits the application of native title to land which no-one else owns or leases, and also to land with which indigenous Australians have continued to have a sacred bond to.

The act states that existing ownership or leases overrides the native title, although the native title may be given back to indigenous australians after mining leases have finished. If land is successfully claimed by indigenous australians under the act, they will have no rights over the developments of the land that they are claiming, including mining royalties.

In conclusion i would have to agree and say that initially the Mabo decision would have been seen by indigenous Australians and by non-indiginous Australians as a win for all of the indigenous Australians living in Australia at the time of the decision.