



Defining Native Title

The Mabo Decision

The High Court determined that Indigenous peoples should be treated equally before the law with regard to their rights over land. The Court rejected any position in law that would discriminate against Indigenous peoples by denying the existence of rights that had been enjoyed freely prior to colonisation and continued to be exercised. In this way, it has been said that the myth of terra nullius, which asserted that the land belonged to no-one, was rejected. The idea that no rights existed in land except those granted by the 'Crown', or the sovereign governments, was also reassessed.

The term 'native title' was used in the Mabo judgements to describe the interests and rights of Indigenous inhabitants in law, whether communal, group or individual, possessed under the traditional laws acknowledged, and the traditional customs observed, by the Indigenous inhabitants. (Brennan J, p57).

It was an important aspect of the decision to recognise that native title predates the assertion of sovereignty by the British. It is not a grant from the Crown like other titles under Australian law. Native title is unique in this sense, when compared with other interest in law. It is inherent to Indigenous peoples by virtue of their status as first peoples and the first owners of this land. Native title does not depend on government for its existence, but it did require recognition through the common law in order to be enforceable in the Australian legal system.

Reference

The Native Title Revolution

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