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Throughout Australia’s history, the rights of Indigenous people have often been violated, their history denied. Justice was non-existent. Paul Keating’s iconic speech, the Redfern Address, raised important issues regarding the rights and welfare of Indigenous Australians. The ‘fundamental truth’ he describes is found in the ‘overruling of the common law doctrine of *terra nullius*’[[1]](#endnote-1). These truths created the groundwork for the official process of native title claims and recognised a set of collective rights for Indigenous people. These rights laid ‘the basis for justice’ as they constituted a substantive and progressive change towards Indigenous recognition and reconciliation. However, despite its grand optimism Keating’s statement risks being an idealistic simplification of justice. His silence on complex matters of sovereignty, self-determination and compensation leaves his notion of justice incomplete.

The *Mabo[[2]](#endnote-2)* case established ‘a fundamental truth’ through its rejection of the two hundred year fiction of *terra nullius.* The High Court recognised that Crown sovereignty did not necessarily extinguish native title. Moreover, it accepted the continual relationship between Indigenous customs and traditional lands. These statutory and common law changes reflect the reality of Australian history, that Indigenous civilisation was extant prior to British colonisation. The progressive dispossession of Aboriginal and Torres Strait Islanders from their lands[[3]](#endnote-3) was explicitly recognised in *Mabo* and subsequently incorporated within the *Native Title Act 1993 (Cth).* The truth of Australia’s history is that Indigenous people are the legitimate pioneers of this nation.

Formal recognition is an antecedent for justice and Indigenous reconciliation. The implementation of legislation and an official procedure for native title claims forms a mechanism by which justice can be achieved. Legislation such as the *Aboriginal Land Rights (Northern Territory) Act 1976,* which preceded native title law, ‘has led to some 40% of the [Northern] Territory being returned to Aboriginal ownership’[[4]](#endnote-4). Moreover, the National Native Title Register has recorded a total of 179 determinations; 136 of which have up held the existence of native title[[5]](#endnote-5). Thus, successes through the native title process are clear signs that Keating’s anticipation of justice can be accomplished through legislative and justiciable means.

Although the *Native Title Act* enables ‘Indigenous people throughout Australia to claim traditional’[[6]](#endnote-6) land ownership, these rights only extend to vacant and unalienated Crown land. Thus, Nations in the urban regions most affected by colonisation, such as the Eora and Kulin and Sydney and Melbourne, cannot effective reclaim their traditional lands. This highlights the inherent disparity within native title to guarantee justice for all Indigenous people. In order to truly lay the ‘basis for justice’, native title must be accessible to all prospective claimants.

Keating interprets the ‘fundamental truth’ as the disposal of *terra nullius* and predicts advancement towards justice. But he could not, or did not, foresee the significant concerns that arose from *Mabo*. Subsequent decisions have diminished the overall effectiveness of native title. For example, *Members of the Yorta Yorta Community v Victoria[[7]](#endnote-7)*imposed stringent requirements on native title claims. Specifically, the decision ‘placed greater emphasis on proving unbroken custom and traditions that pre-date British sovereignty’[[8]](#endnote-8). Furthermore, French J observed in *Western Australia v Ward[[9]](#endnote-9)*, ‘that native title, as a bundle of rights, may be extinguished in part or incrementally’[[10]](#endnote-10). Although *Mabo* laid ‘the basis for justice’, this basis is fragile[[11]](#endnote-11). Clearly, Indigenous people cannot fully achieve justice if native title is the only avenue of pursuit.

Beyond legal specifications of native title, *Mabo* can be seen as a catalyst that paved the way towards Indigenous reconciliation. In particular, it echoed growing sentiment advocating for the acknowledgement of Indigenous rights. Keating admitted that ‘ the starting point might be to recognise that the problem starts with us non-Aboriginal Australians’. The embodiment of Indigenous rights in various laws[[12]](#endnote-12) fosters a harmonious cooperation between Indigenous and non-Indigenous people. Since *Mabo,* groups such as the National Congress of Australia’s First Peoples have emerged, building ‘new relationships with government, industry and among communities’[[13]](#endnote-13). This cooperation is essential to the advancement and protection of the rights of Aboriginal and Torres Strait Islanders.

Ultimately , justice describes the respectful coexistence between Indigenous and non-Indigenous Australians. This can be achieved through the integration of common and customary laws, social recognition and the eventuality of Indigenous self-determination. Examples of integrative coexistence have arisen since *Mabo* via decisions such as *Wik Peoples v The State of Queensland[[14]](#endnote-14).* Although it concluded that pastoral leases would prevail over native title in areas of inconsistency, ‘the Court held that the grant of relevant leases did not confer on the lessee’s exclusive possession of the land under lease’[[15]](#endnote-15). Furthermore, academics such as Marcia Langton have argued that pastoral lease and native title “show that coexistence can and does work”[[16]](#endnote-16). Thus, it is evident that Indigenous and non-Indigenous coexistence is fundamental in establishing justice.

Despite this optimism, Keating’s remarks risk both idealism and over simplification. The question is whether Keating meant the “basis” for justice in a fundamental sense or simply the fragment of a greater endeavour. *Mabo* alone is an insufficient foundation when so many concerns relating to Indigenous welfare are neglected. Issues of compensation arising from native title disputes, victims of cultural assimilation and of the stolen generation are deemed unnecessary and virtually ignored. Legally, customary law and native title are deemed inferior to various aspects of common law. Questions of sovereignty are ignored. Moreover, Aboriginal and Torres Strait Islanders are denied the basic right of self-determination, which is enshrined in the *International Covenant on Civil and Political Rights[[17]](#endnote-17).* Until Indigenous Australians are recompensed and these various challenges are addressed, the basis of justice has not been laid, but suppressed.

The rejection of *terra nullius* undeniably established ‘a fundamental truth’, and ‘the basis for justice’ and progress. *Mabo* inspired a progressive transition towards Indigenous reconciliation. However, significant concerns are yet to be resolved in repairing two hundred years of discrimination and inequality. If the intent in Keating’s optimism is to be given its fullest effect many more and varied steps are required to secure the path towards justice.

1. Kirby, Michael – “In Defence of Mabo” [1994] JCULawRw3 [↑](#endnote-ref-1)
2. (no 2) (1992) 175 CLR 1 [↑](#endnote-ref-2)
3. *Native Title Act 1993 (Cth)* Preamble ‘they have been progressively dispossessed of their lands’ [↑](#endnote-ref-3)
4. W Deans, ‘Land, Rights, Laws: Issues of Native Title’, vol. 2, no. 24, 2003, retrieved 19 April 2012, www.aiatsis.govru/docs/publications/issues/ip03v2n24.pdf [↑](#endnote-ref-4)
5. National Native Title Tribunal, *Facts and Figures,* 2012, retrieved 19 April 2012. www.nntt.gov.au/Information-about-native-title/Pages/Factsandfigures.aspx [↑](#endnote-ref-5)
6. Native Title Research Unit, *Overturning the Doctrine of Terra Nullius: The Mabo Case*, retrieved 15 April 2012, www.aiatsis.gov.au/ntru/docs/resources/resourceissues/mabo.pdf [↑](#endnote-ref-6)
7. (2002) HCA 58 [↑](#endnote-ref-7)
8. Buchanan, Andrew – ‘Yorta Yorta – Some further consideration’, 2003, retrieved 19 April 2012, www.aar.com/pubs/nat/fonatjan03.htm [↑](#endnote-ref-8)
9. (2002) 191 ALR 1 [↑](#endnote-ref-9)
10. French, Justice Robert – “Western Australia v Ward: devils and angels in the detail” (FCA) [2002] FedJScol 14 [↑](#endnote-ref-10)
11. Buchanan, loc.cit. [↑](#endnote-ref-11)
12. *Racial Discrimination Act 1975 (Cth), Aboriginal and Torres Strait Islander Commission Act 1989 (Cth), Aboriginal Land Rights Act 1983 (NSW)* [↑](#endnote-ref-12)
13. National Congress of Australia’s First Peoples – Constitution, 2010, retrieved 20 April 2012, http://natiotu.customers.ilisys.com.au/wp-content/uploads/2010/12/101201-National-Congress-Constitution-Amended.pdf [↑](#endnote-ref-13)
14. (1996) 187 CLR 1 [↑](#endnote-ref-14)
15. Gal, Daniel – “An Overview of the Wik Decision” [1997] UNSWLawJ15; (1997) 20(2) University of New South Wales Law Journal 488 [↑](#endnote-ref-15)
16. B Stevenson, ‘The Wik Decision and After’, *Queensland Parliamentary Librayr,* 1997, retrieved on 20 April 2012, www.parliament.qld.gov.au/documents/explore/ResearchPublications/researchBulletins/rb0497bs.pdf [↑](#endnote-ref-16)
17. Article 1, *International Covenant on Civil and Political rights,* opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) [↑](#endnote-ref-17)