

RERUM NOVARUM LECTURE
Catholic Commission for Justice, Development and Peace
By Mr Noel Pearson

Reconciliation: Making it Real

Transcription of Speech given at the Coburg Town Hall
on Wednesday 30 July 1997

Thank you very much for the welcome from the Koolan nation and from the Commission for their kind invitation to ask me to be here this evening.

Ours is not yet an entirely rationalist society, otherwise we would never have had the *Mabo* decision of 3 June 1992. For the High Court's decision on Native Title is not a rational decision, in the sense that the economic and political rationalists who hold sway in our national policy making and practice in Australia, would define reason. *Mabo's* affirmation of the concept of Native Title and its belated recognition of the enlarged doctrine of *terra nullius* is anomalous - an aberration for the 1990's, because it introduced a new species, and indeed a new layer of property ownership vesting in the country's indigenous peoples, that is contrary to all of the nostrums of rational Western societies. In an era when social and environmental impediments to land and resource development are increasing being removed because they are said to lead to uncompetitive industry are unattractive to investment and therefore contrary to the national economic interest, the *Mabo* decision was a calamitous step in the opposite direction. It introduced new imperatives, legally unavoidable, that would necessarily result in some uncertainty and a measure of inefficiency. Native Title meant that those wishing to deal with land have to take a little more time. It means that there is now another party to deal with. It means there are other interests that have to be taken into account. The simplicity of *terra nullius* was now lost to industry and Governments. Native Title would have implications for what the cost accountants call "transaction costs". Those wishing to deal with Native Title lands now had to contend with property interests which they had steadfastly refused to recognise for 204 years, since 1788, but which now had legal force and protection. For a Western man of reason in the last decade of the twentieth century *Mabo* was indeed an irrational decision. It defied all of the arguments in favour of optimum politics and economy for Australia, or at least this would be the overwhelming conclusion of the men of reason. And yet the decision was made and now has tremendous consequences for our society and economy and Australians have no choice but to deal with it. Patently, *Mabo* threw the country into a turbulence in the midst of which we are still engulfed. A political, economic, social and cultural turbulence. A turbulence about our history, our national identity, a psychological turbulence, indeed a moral turbulence. This has left us alternately excited, frustrated, angry, confused, exhilarated, disappointed, trusting, suspicious, feeling euphoric and depressed and ill. For all of the debate and sickening bitterness and anxious hope that the turbulence of *Mabo* has meant for Australians, I say it is the turbulence the country had to have.

Mabo is the product of imperatives in our society other than the rationalism which has assumed such a dominance over the way in which we do things in Australia. It is the product of imperatives that are at odds with rationalism, namely history and morality. This evening I would like to survey some of the moral and historical issues that Native Title has brought to the fore for Australians. To speak of morality in public debate is a tricky thing in our time for we are all wary of the subjectivities of moralising discourse. It is not that we do not use or hear the word "moral" and "morality" being used in discussion of public affairs, because we do, but there is

hardly any illumination of what is meant of public morality. Believing as I do that *Mabo* is fundamentally about morality, I feel obliged to attempt to explain tonight my thoughts on Native Title and public morality in this country. To this end I am very much inspired by the Canadian intellectual John Ralston Saul, who in his recently published Massey Lecture Series, “The Unconscious Civilization”, has urged our reconsideration on some concepts that are central to true democracy, but which we have neglected. Indeed these concepts are intellectual fringe-dwellers in Western societies, headed for the dustbins. The first is the public good. In order to locate Native Title in the High Court’s decision in *Mabo* within the concept of our public good, I will discuss my thoughts on another key concept: compromise. I refer to the public good because in order for us to know whether *Mabo* has been a morally correct decision for the country, then its effect on the public good is a key inquiry. Acts of justice for individuals and groups within a society must enhance the public good and not diminish it in order for such measures to achieve the moral equilibrium which characterises true justice. The question of whether the finding of Native Title for the benefit of indigenous Australians has worked an injustice against the rights and interests of non-indigenous members of the nation, is a key question for any moral assessment. The maintenance of the public good is therefore key to justice.

I discuss compromise because of its relationship to peace, the making and maintenance of which is a basic moral enterprise for citizens in civilised society. The central illumination of John Ralston Saul in his 1992 opus “Voltaire’s Bastards”, is how Western societies, including Australia, are under the grip of rationalism which reigns supreme. Saul’s thesis is that Westerners have bastardised the true civilising achievement of reason by failing to keep it anchored in the foundations of common sense and morality. The picture Saul paints of societies under the tyranny of reason ruled by rationalists and so ignorant and so silent about their true condition as to be almost unconscious, is a picture that certainly rings true for many of us. Until I read Saul I always thought reason in itself was absolute virtue, however he explains the history of the ideas that Voltaire and others had championed to deliver the West out of the superstition and ignorance that had such a stranglehold over Europe for many centuries. He explains with great clarity the history of how reason severed from common sense and morality has been such a destructive idea over the past two centuries. His argument about its dictatorship within our present corporatist society and democracy is cogent and is frighteningly compelling. Let me urge you all to read John Ralston Saul because he is raising the central challenges we are worried about which, as big as they are, have profound consequences for the smallest things that we are concerned about and for which we may feel some responsibility. In other words, the problems that he is illuminating are fundamental and inescapable and we can no longer deny them.

Let me now turn to compromise. The real world invariably comes bearing down on us with brutality and grave consequence even if, as members of a community, we be intransigent. Compromise is about finding the intelligent solutions in-between positions. Compromise should be dignified and based on principles. Rather than lowest common denominator or the resting place of a weak pendulum, compromise must have muscle. Compromise is a high point because it has foundation in principle, justice and fairness. Compromise does not cop out and it is never lazy and unquestioning. Compromise can indeed be demanding of respect and insistent on fairplay. Otherwise it is not true principled compromise. Compromise develops negative connotations because it does not hold out the juvenile promise of getting everything your own way. It implies selling out. But compromise is not capitulation, rather it is the recognition that we live in society where no individuals or groups can prevail utterly and where we are all subject to the public good.

One of the most nauseous features of our national leadership under John Howard is his constant reference to that sacred people: middle Australia, mainstream Australians. How many times

have we heard this cheap chauvinism, this exclusivist conjuring up of the righteous majority versus the feral black, green, feminist, immigrant, ethnic and gay fringe? The great mainstream of Australia indeed! What this kind of small leadership fails to understand is that the middle is not a constituency. The middle way is a state of mind and heart, a philosophy, human values, that might be shared by those in the deep heart of middle-income Australia as well as by Aboriginal people living on the poverty line. The middle way is not ideological. It treats with appropriate scepticism the religious convictions of the right and the left. The middle way seeks not to overthrow capitalism but to remain honest to its true meaning and to attach to it social obligation and civil responsibility. In other words, it maintains a belief in the capacity for capitalism to be civilised. The middle way understands that the obsessions of the left and the right, with the rights and the responsibilities of the individual in society, is a barren debate. Of course, rights and responsibilities are different sides of the same coin and there must be an equilibrium. The middle way is not obdurate and obscurantist. It does not rest in ignorance. It is open to reason but is grounded in common sense. The middle way is not exclusive to a political constituency because it is a set of humanist values that define the public good, however inexactly. Throughout Saul's writings there is constant reference to the public good, what we should know in Australia as the common wheel. But what an apparently quaint and meaningless concept in our age. It is testament to the extent to which aggressive individualism has become a central value in our society, and we talk so little and with so little meaning about the public good and our obligations in relation to it. Of course, Saul tells us that it is corporatism that is the enemy of the public good because society is fractured into corporate interest groups that are pushing and shoving each other and championing their own causes, careless of the interests of others. The disinterest that is necessary to sustain the public good is absent where groups are only looking out for their own. In such society, groups tend to think that only their interests count. The accommodations, compromises, mutual respect and indeed forbearance and generosity that makes for civilised society, is not appreciated by corporatism.

I come from an Aboriginal mission village where relations with my family and friends are of long standing and of great personal intensity and importance, because these people whom I love and hate so much are the most important people in my world. I remember when I was kid, my old father used to take me out once a year on some particular obscure day, which I don't remember, but it would involve planting a tree somewhere in the dusty street of my hometown. My late father would always stop to clean up debris and broken bottles in the streets of my hometown and would enlist me in these detested tasks. "My mates don't have to pick up rubbish, so why am I forced to do so?" I later found that I'd gained these habits because I would find myself unconsciously doing these things that my late mate used to do in his quietly eccentric way. I know now that my father was teaching me about the public good. He taught me there was life outside of our home. He taught me that we had obligations and responsibilities outside of our own family. He taught me that life in the world outside of our home required understanding and forbearance and a measure of selflessness. He told me the service of God and your fellow man must be your life. I am afraid I've been a derelict son in respect of these prescriptions. I think I am the lesser for it and will no doubt one day have to account for it. Nevertheless I think the public good is a key concept for us. Australia and Australians need to build a new consensus around the public good. A consensus that is more explicit than the "fair go" and it will need to be more resilient. Yes the "fair go" has served us well but it has, make no mistake, receded. That old value of old Australia was appropriate to the unsophisticated nature of our past society. We now need to move beyond the value of giving each other a "fair go" to compete, an opportunity to sink or swim. We need a new commitment to fraternity and an abiding care for each other, hopefully values that should still be relevant to Australians in 300 years time.

Let me share with you another fundamental excitement about Saul, that is, his belief in the people. I have to say that having some experience in the way in which citizens in our democracy can be manipulated and sidelined in our system, reduced to lemmings by the media and the mechanisms of public debate and policy making in our country, I began to develop a cynicism about the punters, the mob. It is a cynicism which contemporary politics promotes. The further removed from the town halls, the shop floors, the streets and community meetings and family tables the business of politics has become, the poorer the democracy and the more cynical is the politics, because politics becomes elitist, unaccountable and unresponsive. For young people entering the corporatist system and learning of the place which the citizenry occupy in that system, it is easy to conclude that the mob are too gullible, ignorant and uninterested to have views worth knowing about. “Leave ‘em to *The New Price Is Right* and *Wheel of Fortune*; don’t even disturb ‘em, play to their lowest denominators; compound their silliest prejudices; urge their meanest streaks; assume their lowest characters”.

Saul’s reminder about the sovereignty and abiding good sense that lies within the citizens has been for me timely and so true. It is from this unruliness, disorder, belligerence, doubt and inefficiency of our public democracy that our true freedoms first arose and by which they will always be defended. I’m also concerned with the word “pragmatism”. The real world is spinning and it is where we live. We need outcomes. Pragmatism should be principled. We should be aiming for a home in this life and leaving utopia for the next. But pragmatism in the hands of a rationalist can tend towards ruthlessness because it has no foundation in principle and morality. Indeed it is pragmatism which the rationalists use to justify the methods by which they accumulated power and the consequences of their methods. Pragmatism must therefore be grounded in principle.

When the *Mabo* case eventually came before the judges of the High Court of Australia in 1991, they were faced with a major dilemma. It was not an unexpected one. The case had been the subject of argument before the court in 1986 when Eddie *Mabo* and his fellow Murray Islanders were forced to argue that a law, which had been passed in the dead of night by the Queensland Parliament in 1985 which purported to extinguish Native Title on the Islands, was unconstitutional because it constituted unlawful racial discrimination. By a narrow margin, the Court ruled that the Queensland statute was indeed unlawful and the litigation could then proceed to trial. Had this 1986 case been lost, the *Mabo* litigation would, of course, have died then and there. In order to decide the first *Mabo* case, the judges of the High Court were apprised of the issues and the arguments that the case would eventually present for their consideration. The judges therefore had several years to ponder how they would deal with the claim by Eddie *Mabo* that contrary to the legal, political and social assumptions upon which Australian land law had proceeded for two centuries, the true position was that the common law of Australia recognised the institution of Native Title to traditional lands. How were they to deal with the doctrine of *terra nullius*, upon which land law administration was founded, when its central contention about a deserted land with no owners flew in the face of history and commonsense? If the Court could not sustain the lie of *terra nullius* and was inclined to reject it, how were the judges to deal with the implications this would have for our law and our economy and society? If the original assumptions were wrong, then what would the new understanding of the law mean for what has already taken place under these wrong assumptions? How was justice for Aboriginal peoples to be provided without working injustice to others in the community?

The finding of Native Title by the High Court posed a challenge for the judges to forge a reconciliation between two fundamental realities. Firstly, the reality of original Aboriginal ownership of the country. The fact is that the land was not empty of its Aboriginal owners when the common law of England and its subjects arrived here in Australia, and the fact is that Aboriginal people have survived over two centuries of brutal colonial history. The second

reality was the colonial accumulation of rights by those who had come to the country and had gained ownership to its lands to the detriment of the original owners. The fact is that this accumulation through Crown grants, through murderous and uncompensated dispossession of the Aboriginal people, through purchases and so on, had occurred over a 204 year period. The fact is that much land and the lives who were connected with that land had been lost.

If the judges were inclined to reject *terra nullius* and accept the humanity of Aboriginal people, the denial of which underpinned the original application of the enlarged doctrine, how were these two fundamental realities to be reconciled? Well their Honours constructed a compromise in the following terms: firstly they rejected *terra nullius* and rule that the true legal position was that the common law of Australia recognised Native Title to land. This conclusion was, in truth, an inescapable one for our Court. The history of recognition of Native Title in other jurisdictions inheriting the English legal tradition, such as the United States, New Zealand and Canada, not to mention decisions in colonies in Asia and Africa, left Australia with no choice but to accept the truth. The truth was that the common law of England which came to Antipodean shores on the shoulders of the so-called “settlers” included recognition of the traditional entitlement of Aboriginal people who were now subjects of the Crown. It was this truth that had been obfuscated and denied for two centuries and the question had never, before *Mabo*, been considered by the High Court. So the judges told us in *Mabo* that in 1788 the Aboriginal tribes of Australia were subjects of the Crown and were the comprehensive owners of all of the lands of the continent held under Native Title. The Court ruled that the Crown had the power to deal with this Native Title including the power to extinguish by making inconsistent grants to the colonists and their descendants. The dispossession of Aboriginal people of their title occurred through what, the then Justice Brennan described as, “a parcel by parcel process” of land grants. By 3 June 1992, the parcel-by-parcel process of extinguishment of Native Title had resulted in extinguishment on most of the lands desired for colonial settlement and development. All that remained were remnant lands, unwanted and left vacant in the custody of the Crown. Much Native Title had therefore been compromised and lost. The High Court ruled in *Mabo* that these titles were extinguished and could not be recovered. The Court established a simple formula to reconcile the fact of original ownership and the fact of colonial history. It ruled that the test of consistency would be the test for the survival of Native Title. The test asks “is the tenure status of the land consistent with the continued enjoyment of Native Title?” If it is, then Native Title survives. If it is not consistent, then Native Title is extinguished. The test of consistency is a commonsense and practical formula for compromise. It provides that no rights and interests accumulated throughout our colonial history can now be disturbed. These rights cannot be compromised or diminished. They remain to be enjoyed. But if there is space to recognise Native Title, then the consistency test means that Native Title can also be enjoyed. This formula constructed by the High Court in *Mabo* and amplified in the *Wik* decision is a formula for compromise that allows us to see land in Australia as falling into three general categories. Firstly, there are lands that have been granted or used by Governments for exclusive purposes. This represents the great proportion of agriculturally and residentially desirable lands in the settled areas of Australia held under freehold title or leases which confer exclusive possession. Secondly, there were lands that were left over and not granted to settlers and not used by Governments. These areas of vacant Crown land and other species of Crown tenure could be enjoyed exclusively by Aboriginal people. These lands comprise Aboriginal reserves and vacant Crown lands and they mainly survive in the more remote and unwanted parts of the country. Only small and remnant blocks of vacant Crown lands exists in the more settled regions. The third category is land which is not under the exclusive ownership of the Government or grantees or the Aboriginal people, but must be shared by all of them. In other words, there is co-existence of Native Title with another title. National parks and pastoral leases represent the two major co-existence tenures and these cover a substantial proportion of the country, predominantly in the more remote areas. So there you have it, the shape of the land rights compromise put forward by

the High Court. All existing rights to land cannot be disturbed. Exclusive title for non-aboriginal people to all freehold and exclusive leasehold land. Shared title to those lands where co-existence is possible.

I have long pondered how I might have answered the challenge which the High Court justices faced in *Mabo*. Would I have proposed a different compromise? Could the compromise have been, from an indigenous viewpoint, more elegantly and more justly crafted? I come to the conclusion that it could not. The High Court proposed a compromise founded on morality and commonsense and in so doing they demonstrated how truly civilised our rule of law is capable of being. Because they structured a proposal for compromise in relation to this bitter business of historical grievance about land that produced justice without war, justice without revolution. Our English legal tradition had within it the capacity for civilised settlement of a question of longstanding political, social and moral grievance. And what a troubling but redemptive prospect. The law of the bloody coloniser wielding the sword of the presumptuous claim to continental sovereignty in one hand, and also carrying in the other the civilised institution of Native Title.

My belief in the morality of the compromise of *Mabo* is based on some principles that are ignored in the public understanding and debate on Native Title. The public good in Australia was served well by *Mabo* because just measures were pronounced for a disenfranchised and marginalised minority in the community without diminishing the rights of other Australians. No one who held rights by the time of the *Mabo* decision has lost any title and could ever lose their title. In fact *Mabo* made clear that they could not be disturbed in their rights, it was just that the law had now pronounced on the rights of Aboriginal people to remnant lands. And yet why is it that the general instinct of ordinary Australians about *Mabo* is that it means other Australians will lose rights? *Mabo* was as much about white rights as it was about black rights, but which Australian families fearfully huddled in their backyards understand this truth? There were two moral lessons which the judges in *Mabo* attempted to lay out for Australians about our colonial history. Justices Deane and Gaudron, in surveying the history of how *terra nullius* had wrought such devastation on Aboriginal society over the past two centuries, said that it had left a national legacy of unutterable shame, and that the acts and events by which that dispossession and legal theory was carried into practical effect constitute the darkest aspect of the history of this nation. Their Honours were conscious of the unusual nature of their judgement in that they had been required to survey some fundamental and troubling questions about our national history. For those decrying the so-called “black armband” view of history, these expressions of moral sorrow and shame are no doubt troubling and unacceptable. But far from urging Australians to wallow in guilt, Justices Deane and Gaudron were showing moral leadership in relation to how we might deal with our history.

The second moral lesson was put forward by Justice Brennan who stated the bald fact that the dispossession of the Aboriginal inhabitants underwrote the development of the nation. Of course, this lesson is one to be drawn from commonsense and from history, and yet its moral meaning has too often escaped Australians. Rather than empathetic and mature reflection of the fact that it was the blood of many thousands of the Crown’s black subjects who were treated as so many animals for so long that it fertilised the great common wealth that is every Australian’s inheritance, we instead have an overwhelming defensiveness: “get over it”, “it wasn’t us”, “get a life”, “stop whinging”, “don’t look at me” - immature reactions that are urged by those amongst us whom we have entrusted with so called “leadership”. With these reflections on our history, the High Court judges had suggested that in addition to the bare legal meaning of *Mabo* there were implications for our understanding of our history and our public morality. The judges were urging our appreciation of the connection between Aboriginal disadvantage and the accumulated benefit and wealth to non-Aboriginal Australians. They urged our understanding of the fact that

the denial of true law in relation to land had resulted in the murder and deaths of countless thousands of human beings no less. *Terra nullius* was not some objectionable legal theory or policy, rather it had real consequences for human families and individuals. It is astounding that this late in the day we do not have the breadth and capacity in our current national leadership to embrace these simple moral observations about our history.

Let me now refer to two responses to the *Mabo* Peace Proposal put forward by the High Court: one from Aboriginal leaders and the other from Government leaders during the 1993 debate that led to the enactment of the Native Title Act. The first concerns the issue of validation of titles that had been granted before *Mabo* in ignorance of Native Title. Whilst the common law rule is that the Crown or the legislature could validly extinguish or otherwise deal with Native Title, lawyers raised the question of whether titles that had been issued since the Racial Discrimination Act was passed in 1975 were invalid. The mining and pastoral industries and State Governments argued the potential invalidity of thousands of titles that may have been granted over Native Title lands between 1975 and 1992. It was said that Aboriginal people could go to court to recover any land lost during these years and to secure invalidity of any non-Aboriginal tenures. The argument about invalidity represented only one legal view, but it was clearly an issue of great uncertainty and it enabled opponents of *Mabo* to generate hysteria. I recall attending a conference of Aboriginal leaders in Alice Springs in early 1993 where the question of validation of these uncertain titles was debated. There were two options available. Firstly, the Aboriginal leaders could insist that the rule of law apply so that if this meant that people and mining corporations had illegally obtained titles after 1975 then they should have to wear the legal consequences of these illegalities, no matter what costs such uncertainty and such invalidity might have for business and for the economy. The second option was for the Aboriginal leadership to accept that these grants had been made, they were now enjoyed by other Australians and it would be wrong to deprive them of their title. After three days of vigorous debate, the Aboriginal leaders at the Alice Springs conference put together a set of principles that they wanted reflected in Native Title legislation. These principles were put forward to the Federal Cabinet by a delegation on 27 April 1993 in a document that was dubbed “The Aboriginal Peace Plan”. These principles sought Commonwealth legislation to protect Native Title from arbitrary extinguishment at the hands of State and Territory Governments. They sought reparation for Aboriginal groups who had lost their land, constitutional amendments recognising the place and rights of Aboriginal people, and the negotiation of appropriate social justice measures. But these principles also included support for the validation of non-Aboriginal titles issued between 1975 and 1992. So the Aboriginal leaders offered support for legislation to validate white titles. The Governments, industry and the wider community did not have to fight with Aboriginal people to get validation. This was offered by the Aboriginal side even before negotiations began. Analyse this in moral terms. The Aboriginal leaders had taken a difficult decision in the face of their own community. They had given their support to validation even though members of their own community may have had legal rights to seek invalidity. In other words, they made an assessment that justice and responsibility required that these titles not be disturbed for the economic and social good of the country. Whilst the Aboriginal leaders who advocated this course were not giving their *imprimatur* or moral support for the original acts of dispossession, they were accepting of its legacy. They were accepting of its legacy. Instead of placing their hopes for justice on the dispossession of non-Aboriginal title holders, they instead asked for the protection of such Native Title as was left over as at the date of the *Mabo* decision.

As one of the advocates for validation, I often marvel at the profound moral gesture that this represented for my more mature colleagues who had been at the forefront of a long and incremental struggle, long before the *Mabo* decision came along. And what was the reaction to this act of graciousness from the non-Aboriginal side? The mining industry and State Government response was this: “thanks very much for the validation of our rights, but we don’t

just want our titles to be secure, we want your titles to be extinguished as well". And so we embarked on a bitter campaign over the course of 1993 to defend Native Title from extinguishment. The Aboriginal offer on validation gave us no credit whatsoever. In my more uncertain moments I think the Aboriginal leaders, including and particularly myself, were grossly naive. There were no prizes for gracious players in the Native Title debate. The opponents of Native Title have never offered anything to the Aboriginal side in the five years of policy debate that we've had. And yet the Aboriginal side have always attempted to put compromises on the table that would address the concerns and needs of our opponents. And yet the ordinary Australian perception is that the Native Title legislation resulted in Aboriginal people getting everything and the rest of the country suffering. But the truth is that the Native Title Act delivered validation and security of titles for all non-Aboriginal titles and actions from 1788 up to 1 January 1994. If there was anything illegal or invalid, any title grant, any administrative action, any legislative action up to 1 January 1994, the Native Title Act made all of these acts legally valid, and Aboriginal leaders supported this. And yet what to date have Aboriginal people gained? There have been no Native Title decisions because State and Territory Governments simply refuse to cooperate with the scheme set out in the Act. They would prefer to fight claims for Native Title and to find all kinds of arguments against its existence. So the truth is that white Australians gained all that they needed up front on 1 January 1994 once the Act was passed, whilst Aboriginal people have had to wait until Governments some day decide to cooperate and until they win expensive and time-consuming court cases.

The second response to *Mabo* that I wanted to discuss concerns how political leaders dealt with the so-called "disproportionate impact" of Native Title in jurisdictions such as Western Australia, Queensland and the Northern Territory, where Native Title was assumed to be of greater significance than in the more densely occupied States. The most vivid complaint about disproportionate impact was aired by the then Queensland Premier Wayne Goss to a company directors' conference in Melbourne in 1993. Goss essentially argued that Queensland, Western Australia and the Northern Territory were penalised for not having dispossessed Aboriginal peoples as comprehensively as had occurred in New South Wales and Victoria. Now the citizens and political leaders of these latter jurisdictions benefiting from past dispossession, did not have to be anxious about Native Title as their Queensland counterparts. Goss' argument had the appalling logic of the quintessential man of reason that he is. His argument was logical, but how horrific. Because if you actually grounded the argument in commonsense and morality, you realise that he is in fact expressing the wish that the genocidal dispossession that had been visited upon Aboriginal families and tribes in the more settled areas of the country, had also been visited upon the Aboriginal people of his State. If only our ancestors had done the same job in Queensland, the Northern Territory and Western Australia, that the Tasmanian ancestors had done, or attempted to do, we would not have to deal with Native Title and we would be better off as a society for it. The appalling amorality of the Goss logic lies at the extreme end of the rational pragmatist that John Ralston Saul describes as being such a scourge in our contemporary society. But make no mistake, this wish or hope for dispossession is widespread. The stock response of Governments and other parties to Native Title claims is based on the hope that people have been dispossessed. If the High Court has legally ruled on the existence of Native Title in relation to certain tenures, the hope is that there is no Aboriginal people left to claim the title. Hopefully, either they were massacred or died from diseases or were shifted thousands of miles away from their homelands. Hopefully, they won't know where they came from and in any case, we will argue vehemently and vigorously that they are not *real* Aboriginal people. They don't have any real culture left and they don't have any real traditional law. And this is precisely where the Yorta Yorta claim to Native Title, to their remnant traditional homelands, is at. This is where most of the claims to Native Title are at right across the country. Only in the disappearance of the Aboriginal people or in the hope they have lost all connections to their traditional homelands is there any security and happiness for non-indigenous Australians. The

hope that the dispossession and displacement has been comprehensive is a widespread subliminal hope.

If the finding of Native Title will never diminish the rights of other Australians, why should not we as a people considering the moral reminders of our judicial elders, actually celebrate Aboriginal survival and their ability to belatedly enjoy their remnant rights? Should not Wayne Goss, Richard Court and Marshall Perrin as leaders of white Australia, have been proud and thankful of the fact that Tasmania was not repeated in the histories of their States? Might not the country have been anxious to identify the survivors and to accord them with absolute promptness the just recognition they had for so long illegally denied. Only rational humans concerned about administrative and economic implications and complications most of which are dreamed up to serve their various arguments, devoid of any consciousness about history and morality, could respond in the way we have. We have to be concerned, granted, about the economic and administrative implications of Native Title and both sides, black and white, have a responsibility to ensure that Native Title becomes a good thing for our public good. But to continue to yearn for the unjust arrangements that prevailed in the era of *terra nullius* will not benefit our country. Native Title is here and we have to deal with it. For after all, it is the peace offering of non-Aboriginal Australians to Aboriginal Australians to settle the fundamental issue of land rights. There can be, of course, no infidelity.

Finally, the Prime Minister has used the metaphor of the pendulum, implying that the legal and moral pendulum has swung too far to the side of Aboriginal people and needs to be brought back to the centre. His Ten Point Plan is said to be aimed at restoring that balance. No greater, no more deliberate, and no more cynical and calculated a lie will be peddled in the forthcoming debate over the future of the Native Title Peace deal than the lie that the pendulum has swung too far in favour of Aboriginal people. The High Court has already set out the true balance in *Wik*, ruling as it did that pastoral rights will have precedence over the co-existing Aboriginal rights wherever there may be conflict. It is up to Australians to assess the true moral balance. The Deputy Prime Minister however, has told us all point blank and with utter frankness that the Ten Point Plan has within it bucket loads of extinguishment. And so it has. If the central tenets of the Ten Point Plan succeed, the *Mabo* compromise will be lost to all of us. It is time, and indeed up to non-Aboriginal Australians to defend their own peace proposal, or our moral turbulence will never subside.

Thank you