# Legal activism undermines our rights

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Stable and well-understood laws underpin our business and personal arrangements.

Laws originally were derived from texts like those written down succinctly in the Ten Commandments. These have been extended and modernised but their principles remain.

Gradually during the 20th century this started to change. Communist regimes overturned individual property law. The upshot was a series of failed economies.

In Australia, we have seen increased legal activism by a judiciary, which often claimed to be following established law but was actually introducing radical changes. This has been compounded by the appointment of activist judges with prominent political agendas such as Justice Lionel Murphy, appointed by the Whitlam government. Victoria and Queensland have been among the state governments that have followed suit in appointing radical lawyers.

The adverse effects of "legal activism" are seen in Australian legal decisions on native title. The first of these, Mabo, was delivered by the High Court in 1992. One politically committed judge, who played a leading role in the decision, Mary Gaudron, was the replacement for Lionel Murphy.

Justice Michael Kirby, himself a radical lawyer, described this judgment as contrary to legitimate legal interpretation. He said it was, "a reversal of longstanding legal principle, unchallenged since 1847. It was not a return to earlier principles erroneously displaced by some past decision, nor was it a development of the law in response to some change of circumstance".

In its legal adventurism, the Mabo High Court sought to prevent people from becoming concerned about the family home. The last thing the activists wanted to ignite was a movement for a referendum that would return the Constitution to the position they had just overturned. It therefore said its impact on existing property was slight and limited to remote agricultural holdings.

Kirby himself participated in the next case, Wik. This sought to slice off another chunk of long-defined property rights. It extended the scope of the Mabo judgment by suggesting that pastoral leases could be subject to native title.

Naturally, its victims, ordinary farmers, were displeased. It took considerable expense on their part to fight the consequent Yorta Yorta claim on the Victorian border and to reconfirm landowners' rights.

A further twist was introduced by a decision regarding native title to Perth by another militant judge, Murray Wilcox. Before retiring to campaign on global warming, Wilcox left a destructive legacy. In a test case, he claims to have "discovered" that native title exists over parts of Perth. This decision threatens property rights across Australia and strikes at the heart of the family home.

The truth is that legal activists have tried to change property law in order to offer increased funding to Aborigines. Actually, these decisions divert Aboriginal people from participating in mainstream Australian economic activity. Many with Aboriginal ancestry see greater gain from pursuing title over other people's assets.

Billions of dollars of special funds for indigenous Australians has failed to improve their quality of life. Further pursuit of "sit down" money through native title will continue to leave them marginalised. Self-help is the only way forward.

The rule of law and its protection of property rights has provided incalculable personal benefits and been the cornerstone of every successful economy.

Many present-day judgments are in sad contrast to the positive role that law courts have traditionally played in creating the property rights we continue largely to enjoy. They also create incalculable risks of discrediting the legal profession and of the public losing confidence in the legal system.

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