The Eddie Koiki Mabo Lecture 2012
Mabo 20 years on.
Did it change the nation?
Professor

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Canada claimed that the native people had no rights to property, and native title, as it was Indian or native
title became a fixed part of the law in North America, and it was enunciated with great flair in the American
Supreme Court in the 1880s. So there was no doubt that native title was a normal accepted way of
proceeding and terra nullius was quite anomalous. Now, not only was this true about colonisation before
Australia was settled, it was true also after Australia had been claimed. That is in New Zealand, and Fiji, and
New Guinea there was the acceptance that the Indigenous people who were living on the land had rights to
the land. So Australia was in a quite unique situation and there were also consequences of that unique
situation.

In North America, in Canada and the United States, because the Indians were regarded as the landowners it
was necessary to negotiate with them. It was necessary to learn their languages to try and understand how
their societies worked and when it came to it to gain land either by making treaties or by outright purchase.
And this is what happened in North America before and in New Zealand later. But in Australia there was no
need to negotiate, no need to purchase, no need to learn the languages, no need to try and understand the
society that existed here. The settlers were quite confident that they were moving out into vacant land that
belonged to nobody. They were quite convinced that the Aboriginal people they met were trespassers on
their land, and that when the Aboriginal people resisted this invasion bit by bit across the continent then they

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they knew about the Mabo judgement and they had come to Australia to see what they could learn about
the Mabo judgement which they could take back and try and win their rights to their traditional lands.

So, that’s my first point. The rest of the world did know about this, and it was important for Australia’s
standing in the world. But of course, the centre of the story is land. So let’s consider land over the last 20
years since the judgement, because the Mabo judgement was just the beginning of the story. That is, because
it was so revolutionary and because the judgement was regarded as so strong juridically, and because it was a
six to one majority it carried great, great power and it was obvious that this was not going to be overturned.

Following Mabo there were many, many more court cases endeavouring to define exactly what native title
meant in the Federal Court and in the High Court. The Wik judgement in 1996 which recognised a continuing
Aboriginal interest over pastoral leases was even more controversial than the Mabo judgement but could
only have happened following the Mabo judgement. And then, many of you will recall, the Native Title Act of
1993 passed on Christmas Eve as a result of fierce opposition and criticism from the Liberal and National
parties and I must say a great deal of unease amongst the Labor Party, and there’s no doubt that it was

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Aboriginal groups or nations, if you will, have negotiated with local government, state and federal
governments, with mining, fishing, tourist industries, with the Wet Tropics Authority, with GBRMPA, with
energy companies and with pastoralists. Each one has been different and distinctive. Some have been quick,
some have taken years, some have taken many, many meetings because there are so many other
stakeholders but nonetheless these agreements have been reached. I think this represents some important
issues.

Firstly, there’s no doubt that these land use agreements (remember 600 of them), does indicate a
widespread acceptance of native title. So many of these agreements aren’t in the cities, aren’t in the liberal
leafy suburbs, but out there in regional and remote Australia. So there has been a widespread acceptance of
the existence of native title: a recognition that people indeed are the original owners of the land; respect for
those people as people of the first nations; and an understanding that their ancestry reaches back for
hundreds of generations.

I think even more importantly is this point about recognition. At last, people are respected and recognised as
the traditional owners of their country, even if the negotiation ends up with them only having some say on
the way that country is changed and developed and above all it meant that all over Australia Aboriginal
people for the first time could sit down with government, with industry, with all the other players as equals,
as someone who had something to bring to the negotiating table. They were not there to receive charity.
They were not there to receive a gift from the white fellow. They were there because they had their native
title, either accepted or presumptive which they could put on the table an

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Now, it is that pattern that I think Eddie was wanting and expecting and I notice, although these things don’t
get reported in the far south, that at a recent meeting while there was still a Labor Government in
Queensland Premier Bligh and the Cabinet was in the Torres Strait and she promised that she would pursue
the matter of self-government and the territorial rights of the Torres Strait Islanders and wrote to the Prime
Minister suggesting that this should happen and that a referendum should be held. So Eddie would be
delighted with what has been achieved, but he would still have wanted more.

Let me finish by returning to my role as a historian and consider two historical issues. Let’s remind you that
the Murray Islands were not part of Australia until 1879 when Queensland pushed its border north. Now let’s
suppose either that Queensland did not push its border so far, or that it did not annex to north the Torres
Strait at all. Well then a few years later in 1884 when the British Government annexed Papua it is quite likely
that the Torres Strait Islands would have been included in that annexation. They would have become part of
Papua. In a way, the