

## From little things, big things grow

In 1992, a decade long legal battle on Indigenous Australian land rights came to an end. At its final hearing, the full bench of the High Court of Australia recognised the prior claim of Indigenous Australians to the land that was claimed for England in the 18th century.

For Australia, this was a significant event and the case received a lot of attention from the public, the media and politicians. People were interested in and, in some cases, nervous about what land rights would mean for the future of land ownership. For the people involved in the Mabo case, the High Court ruling was an immense personal and community victory.

One of the key figures in the Mabo case was Eddie Koiki Mabo (1936-1992) of Mer (Murray) Island in the Torres Strait. Mabo had inherited land on Mer from his uncle. He was later made to realise that the land could not actually belong to him, because after colonisation by the British, it had been claimed as 'Crown land' and therefore it belonged to the state. Recognising this as profoundly unjust, Mabo and others from the Torres Strait sought to claim their right to their ancestral lands and took their case to court.

# Laying a claim

In 1788 the continent of Australia was claimed for the British crown and the Great South Land became part of the increasingly vast British Empire. The British government determined that the Indigenous people who occupied Australia at the time of colonisation had no prior claim to the land. The reports of the Aboriginal people of Australia that had gone back to England gave the impression that they were a nomadic people who lacked a concept of property, were without social organisation and had no system of laws. Under those circumstances, it was held that Australia was terra nullius—a land belonging to no one.

When Lieutenant James Cook sailed on his first voyage of discovery in 1768, he carried a set of 'hints' from the president of the Royal Society of London, the Earl of Morton. The hints advised Cook that he and his crew had a moral responsibility to do no harm to the Indigenous inhabitants of the lands that they visited and, more importantly, that Indigenous land occupation deserved the respect of European explorers who had no prior claim to ownership. Morton's validation of native title was ignored by Cook, who followed instead the instructions of his superiors of the British Admiralty. Their orders were for him to 'take possession' of suitable lands in the name of the British crown.(1)

In June 1992, 204 years later, an historic decision by the High Court of Australia determined, for the first time, that Australian common law recognised the earlier or prior land rights of Aboriginal people.

# Eddie Mabo's land

Instrumental in bringing about this momentous decision was Edward Koiko Mabo, a member of the Mer (Murray) Island people of the Torres Strait. Mabo was born and raised in a village on the island of Mer. His mother died shortly after his birth and, according to Meriam custom, he was adopted by his uncle Benny Mabo. Through his uncle, Mabo inherited land that was known to belong to the Mabo family. Mabo left Mer at the age of 16 to live and work in rural Queensland and in Townsville.

While working at James Cook University, Mabo became friends with historian Henry Reynolds. In 1974, during a conversation with Reynolds and Noel Loos, Mabo came to understand that the land on Mer that he believed was his inheritance was, in fact, crown land to which he had no legal claim. Eddie would often talk about his village and about his own land, which he assured us would always be there when he returned because everyone knew it belonged to his family. His face shone when he talked of his village and his land.

So intense and so obvious was his attachment to his land that I began to worry about whether he had any idea at all about his legal circumstances [...]

I said something like: 'You know how you've been telling us about your land and how everyone knows it's Mabo land? Don't you realise that nobody actually owns land on Murray Island? It's all crown land.'

He was stunned [...] How could the whitefellas question something so obvious as his ownership of his land?

In 1981, at a land rights conference at James Cook University, Mabo outlined native title ownership and land inheritance on Mer. In the ensuing discussion, it was suggested that it was time a test case regarding Indigenous land rights was pursued through the courts. Mabo was an enthusiastic supporter of this proposal and he pursued the following 10-year legal battle with unwavering conviction.

## To court

In 1982, Mabo and other Torres Strait Islanders filed with the High Court their statement of claim for their ancestral right to ownership of land on Mer. The Torres Strait Islanders argued for acknowledgement of 'native title' and the customs, patterns of land use and ownership that had predated colonisation of Mer by Queensland in 1879.

Over the next 10 years, Mabo pursued the right of Indigenous title through the Queensland courts where he and his colleagues faced fierce legal resistance from the Queensland Government. In 1991, the case was referred to the High Court of Australia.

The High Court of Australia sat a full bench to hear the Mabo case and delivered its verdict on 3 June 1992. In the verdict, the court was divided 6:1 in favour of Mabo in the case *Mabo v State of Queensland*. As the leading plaintiff, Mabo's name was given to the High Court's landmark decision to reverse the principle of terra nullius and recognise the prior claims of native title. The verdict meant that the court rejected the British declaration of terra nullius over Australia and accepted that, under British common law, the previous rights and interests in land possessed by Aboriginal Australians survived colonisation.

The Mabo decision essentially said that the notion that Australia was terra nullius or empty land, that nobody owned it, was wrong. And the court threw that out. The common law, which came from England, but it's actually part of Australian law, was now capable of recognising native title.

As a result of the High Court decision, the ceremony performed by Captain Cook on Possession Island on 22 August 1770 to claim the entire east coast of Australia in the name of King George III was made meaningless.

## **A wonderful legal precedent**

The victory established a legal precedent that recognised the right of Indigenous Australians to claim ownership of land they had traditionally occupied. Unsurprisingly, the decision was controversial and the ensuing Native Title Bill, which was introduced into parliament by the Australian Government, led to one of the longest Senate debates on record. The resulting Native Title Act passed into legislation in 1993.

## **Remembering Mabo**

Mabo's long and passionate pursuit of the recognition of Indigenous land title is recorded in the Library's Mabo Papers collection. The legal and personal papers in this collection provide an unparalleled insight into the groundbreaking case and the people who supported it.

The Mabo decision was handed down five months after Mabo's death. Three years after his death, Mabo's body was taken from Townsville and reburied on Mer in a traditional ceremony that is reserved for the burial of a king.

Debate continues over the issue of recognising Aboriginal land rights and the injustices perpetrated on Indigenous communities by colonial societies. In November 2010, Mabo's widow, Bonita Mabo, called for a Commonwealth Government apology to the South Sea islander community in Australia, similar to that issued for the Stolen Generation in 2008, for what she described as slavery from the 1860s to shortly after Federation in the early twentieth century. It is likely that such claims will continue to arise while the memory of European imperialism remains.