

Koiki Mabo: Mastering Two Cultures - A Personal Perspective

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Edward Koiki Mabo was a Meriam man from one of the most remote islands in the Torres Strait, Murray Island. He decided early in his life that he had to master the ways of the Whites to exist in the society that the Whites dominated, but never to lose his Islander custom and language. He had a flaring imagination and a determination and courage that enabled him to establish his own community school for his people in Townsville. This courage and determination also enabled him to persist through the ten years of the Meriam High Court challenge, which demanded recognition of their native title to the land. He died of cancer on 21 January 1992, four months before the Murray Island challenge destroyed the concept of *terra nullius*: that Aboriginal and Torres Strait Islander people were too uncivilised to be considered as owners of their own land. This is now commonly referred to as the Mabo Decision, or sometimes simply Mabo. In doing this he and his supporters have opened up the possibility of a new and more promising vision for both black and white Australians.

Koiki Mabo, as he preferred to be known, described the years of childhood and adolescence spent on Murray Island, Mer in Meriam, as the happiest days of his life. Indeed, emotionally and intellectually, he never left Mer, even though he lived most of his life on the mainland, chiefly in Townsville. He was banished from Mer for twelve months at the age of fifteen, returned for two years, although employment during this period took him away for a month or six weeks at a time. Even his move to the mainland in 1957 was a typically Torres Strait Island experience, as a member of the Islander crew of a trochus lugger. Between 1957 and 1961, he became a member of the small but growing Torres Strait Islander community of North Queensland and found employment with other Torres Strait Islanders on other luggers, cutting cane, or working in western Queensland on the railway lines. From 1962 to 1967 he worked for the Townsville Harbour Board, mostly on the tug *Lalor*; he had previously found casual employment there. From 1967 to

1975, he worked as gardener at James Cook University, and from 1978 to 1981 at the Commonwealth Employment Service. In these last three jobs, in his creation and administration of the Black Community School from 1973 to 1985, and in the ten-year struggle, from 1982 to 1992, that led to the recognition of Native Title, he was working in a world dominated as completely by white Australia as was the island he had left as a teenager. And this world was enmeshed in alien codes, values and institutions that seemed, to Torres Strait Islanders, designed to disadvantage and humiliate them and to continue the dependence on white authority they had known in the Islands. Koiki Mabo never accepted white dominance or the inferior status colonialist history attempted to impose on his people. Indeed he maintained an optimistic confidence, sometimes verging on a good-natured arrogance. His absolute faith in the justice of his struggle and the integrity of his own claim was reflected in those last words: "Land Claim".

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The story of how Koiki Mabo became master of two cultures, his own and mainland culture, will seem quite extraordinary to white Australians. Yet, in its broad outlines, it is typical of those Islanders who have emigrated to the mainland since the end of World War II. This process quickened from the late 1950s with the collapse of the pearlshell and trochus industries after the introduction of plastics.

He grew up on Mer into his own language and culture. Informally, he discovered and learnt his kinship ties and his place in his Piadram Clan.¹ From his village of Las he learnt of the other clans and villages who

¹ This paper has also been published in Noel Loos and Koiki Mabo, *Edward Koiki Mabo: His life and struggle for land rights*, University of Queensland Press, St Lucia, 1996, chapter 1. The tapes on which this autobiographical material is based are at present in the possession of the author but a copy has been placed with Mabo's personal papers in the National Library, MS8822: "The Papers of Edward Koiki Mabo". The entire collection is **restricted** until January 2005. Mabo was baptised Edward Koiki Mabo but preferred the Islander "Koiki" to the post-colonialist "Eddie".

made up the Meriam people. He grew into the social and economic life of the Island, the gardening and the fishing on the two homes of the Meriam: Mer and the sea. He took part in the dances and ceremonies that punctuated the yearly round or were associated with the rites of passage of birth, marriage and death, especially the tombstone unveilings that the Islanders had developed since the coming of Christianity. These commemorated the death of kinsfolk "Islander fashion", affirmed the ongoing importance of family and friends and celebrated life.

He became part of a devoutly Christian community, itself a part of the Anglican Diocese of Carpentaria whose Cathedral city is Thursday Island, T.I. to the Islanders. He also became familiar with the traditional belief system, at least those aspects of it that were a living part of Meriam culture, especially the Malo-Bomai cult. It is not clear whether the current respect for Malo-Bomai stemmed in its fullness from pre-Christian times and had been hidden from western ears until recently, or whether it has assumed greater significance in recent years.² I can remember sitting next to Koiki many years ago, certainly before he was involved in the Native Title case, watching a film that contained very old footage of part of the Malo-Bomai ritual. To my surprise Koiki was visibly shocked that this part of the ceremony was being shown. It was sacred and secret, he said. In 1984 Koiki discussed gardening and fishing rituals he had learnt as a boy. He believed these were still used. He also discussed love magic and sorcery, *maid* or *pouri pouri* to the Islanders, and various other Meriam beliefs which were current when he was growing up on Mer and which were still so in the 1980s, Koiki believed.

The economic possibilities open to Meriam men in the 1950s were starkly clear. Those who stayed in the Islands could work on the pearlshell and trochus luggers for less pay than white Australians or in the few government jobs, such as untrained school-teacher or storeman, which were also poorly paid. As Koiki approached manhood,

² J. Beckett, "The Murray Island land case and the problem of cultural continuity", in W. Sanders (ed.) *Mabo and Native Title: Origins and Institutional Implications*, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra 1994, pp.17-19, 22.

opportunities were opening up on the mainland where Torres Strait Islanders could draw wages equal to white Australians even if in low status, semi-skilled jobs, such as fettling in the railways or cane-cutting, notorious for hard work under the tropical sun. Koiki Mabo was working on trochus luggers in the dying days of the industry. He visited various ports such as Cairns and saw the opportunities and the different way of life. It was then that he realised that Torres Strait Islanders were being economically exploited and educated for servitude in the fisheries. The twenty-year-old Meriam man decided "to give it a go and see what happens". He had set out on a great and challenging adventure in an alien land.

A number of factors seem to have contributed to Koiki Mabo's decision to try to make it on the mainland. He had fallen foul of Mer's Islander administration because of a youthful "misdemeanour", that had flung him willy-nilly into the lugger work force. He was directed where to work by the Queensland Government administration in the person of Mr Pat Killoran, then the senior Department of Aboriginal and Islander Affairs (DAIA) official at T.I. He had experienced directly, while still an adolescent, powerlessness before a white colonialist administration and the Islander Council which then functioned as part of that administration. He had become aware that Islanders in the Torres Strait were economically exploited, whether they were Islander owners of Company Boats, or employees on them or the Master Boats owned by commercial interests. His mother, Maiga Mabo, had also urged him to find work on the mainland because she thought working on luggers was a dead end in the changing world in which Koiki was growing up. Moreover, he had seen the world beyond the Islands and there were Islander friends and relatives already living there in employment that offered financial rewards unavailable in Queensland's Torres Strait Island colony. There was also a freedom from colonialist controls. All of these factors contributed to the move to the mainland, a move that wasn't seen as permanent and certainly not as a rejection of his culture and people.

In telling his life story, however, Koiki placed great emphasis on the vision of Torres Strait Islanders' future given to him by Robert Victor Miles, Bob Miles, the only one of his white school teachers he admired:

"a very good teacher and a friend of all the school kids...He was the one that taught me the most of English language". Bob Miles learnt the western language, Kala Laga Ya, when he taught on Saibai, and Meriam when he taught on Mer. He was the first of Koiki's white teachers who allowed the children to use their own language; however, he convinced Koiki of the importance of English for Torres Strait Islanders and of understanding mainland culture. Koiki lived with Miles for a time when his mother was ill: "it was an ideal situation for us to exchange conversation in two languages". Miles increased his mastery of Meriam from Koiki, and Koiki his mastery of English from Miles. But he learnt more than a new language. He was introduced to mainland culture while still on Mer. Koiki summarised this importance in his reflection on his childhood:

My lifetime on Murray, I think, was the best time of my life I ever spent; growing up on Murray and having an opportunity to learn both the whiteman way of life from my school teacher, Robert Miles, and my traditional heritage as well.

Koiki's grasp of English was more fluent and confident than most of the Torres Strait Islanders of his generation. This no doubt was also a factor in his decision to move to the mainland. He was fluent enough to argue with Killoran, to converse with Cairns police, the Commonwealth Employment Service in Townsville and to bargain with the Palm Island administration when one of the luggers he worked on called in there. Because of his command of English, he often found himself the spokesman for his group. In the 1980s he was to be the main interpreter of Mer custom to the lawyers preparing the claim for native title, a role in which he was seen as indispensable.³ Indeed, throughout his life Koiki played a very valuable role in educating those white Australians he came in contact with, myself not least, as well as people like historian Henry Reynolds, linguist Larry Cromwell, and the galaxy of lawyers he

³ Personal conversation with Bryan Keon-Cohen, Townsville, 17 June 1993.

interacted with over the ten years of the Murray Islanders' struggle.⁴ In many ways he repeated the relationship he had experienced with Bob Miles.

In 1959, at the age of 23, Koiki Mabo took a job with a construction gang on the Queensland Railways at Hughenden in western Queensland. This was the beginning of his involvement with the working class movement: "I learnt quite a bit about trade unionism while in the railways because of the fellows at the Hughenden Railway Station". He became a union representative on the Townsville-Mount Isa rail reconstruction project and encouraged other Islanders to join unions. After his marriage in October 1959, he had returned to the west with Bonita (Netta) to earn money for a deposit on a house. Back in Townsville after two years, Koiki returned to his old job as deckhand on the *Lalor* where he worked, all told, for seven years. During this time he became more involved with the trade union movement, at first informally. At this time, the 1960s, many of the union leaders in Townsville who supported Koiki were members of the Communist Party: Eddie Heilbronn, Bill Timms, Bill Irving, and Fred Thompson. In one way this was fortunate as the Communist Party had demonstrated a formal commitment to Aboriginal advancement reaching back to 1931 and affirmed in 1943. This had clearly been accepted at branch level in Townsville.⁵ However, in the Queensland of the 1960s, dominated by the National Party, Koiki came to the conclusion that the Harbour Board administration was persecuting him for his political associations by moving him to an unattractive job where his pay was less, so he resigned and worked as a gardener at James Cook University from 1967 to 1975.

⁴ Bryan Keon-Cohen, speaking at Koiki Mabo's funeral service. An extract containing this comment was repeated in "A Tribute to Koiki Mabo", ABC Law Report, 3 March 1992. Larry Cromwell, speaking at Koiki Mabo's wake, 2 February 1992. Personal conversation with Henry Reynolds, 20 July 1994.

⁵ *Worker's Weekly*, 24 September 1931. See also M. Franklin, *Black and White Australians: An Inter-Racial History 1788-1975*, Heinemann Educational Australia, South Yarra, Melbourne 1976, p.134. Economic and legal equality for Aborigines was included in its 1943 platform and its members were urged to support Aboriginal advancement.

During his time at the Townsville Harbour Board, Koiki had begun to participate in black organisations. In these early years the membership of these organisations was Aboriginal with a few Torres Strait Islander and South Sea Islander exceptions. Koiki became the first secretary of the Aboriginal Advancement League in Townsville which consisted of about nine members of whom five were active in decision making. The Townsville Branch distributed leaflets from the Federal Council of the Advancement League, raised funds, got itself associated with the Townsville Trades and Labour Council and attended their fortnightly meetings. Koiki and Dick Hoolihan were the Advancement League's regular representatives and, in Koiki's eyes, this relationship with the Trades and Labour Council was very important in his formation as an activist. The union leaders mentioned above encouraged the black representatives to raise issues but refused to speak on their behalf. Mabo grasped these opportunities to improve his English, to gain confidence in public speaking and to learn to be an activist in a mainland setting. He was a fast learner.

The most important immediate consequence of this was the 1967 *InterRacial Seminar: What Is to Follow the Referendum?* which involved 300 participants, black and white, to discuss the future of race relations in Australia in general and Townsville in particular. This conference was of such historic importance that Professor Charles Rowley referred to it in *The Remote Aborigines*.⁶ Following the success of the 1967 referendum, Mabo had suggested to members of the trade union movement the need for this conference to raise the awareness of all members of the North Queensland community to the problems confronting indigenous Australians.⁷ The subsequent organising committee involved members of the black community, including Koiki, as well as representatives from the trade union movement, James Cook University, and the churches. Mabo's initiative had brought together a coalition of committed people, many of whom were to retain their

⁶ C. Rowley, *The Remote Aborigines*, Ringwood, Vic. 1972, pp.106-8.

⁷ K. Orr (ed.) *We the Australians: What is to follow the referendum?* Townsville 1967, pp.1, 33.

interest and involvement in the years to follow. Some maintained a kind of Bob Miles relationship with him until his death. Indeed, Mabo once told me that he had realised that there were sympathisers in the union movement and academia who could assist him to master the white Australian world he was encountering. He then deliberately cultivated them.

Mabo considered his understanding of mainland politics was largely derived from his involvement with the trade union movement, but initially he didn't even know what "Communism" or "Communist" meant. Although some attached this label to him, he said he was never tempted to become a member.

He made great use of his link with academia before and after taking employment at James Cook University as a gardener. He was asked regularly to speak to students in my race relations course and also addressed students in other areas such as education. He used the James Cook University Library to discover what had been written about his people, especially in the Haddon Reports, and in the process not only realised that white academics had a lot to learn and often made mistakes, but expanded his own knowledge as he grafted on new insights to his old understanding.⁸

One of the most important insights Mabo obtained, and one which was to have Australia-wide significance, came about by accident. This was that he did not have legal title to his land on Murray Island. Koiki Mabo, Henry Reynolds and I met in Reynolds' study to have lunch at some time between 1972 and 1975. Mabo told us of his land holdings on Murray Island. Reynolds and I then had the unpleasant responsibility of pointing out to him that the outer Torres Strait Islands were Crown Land, indeed designated on a map we had of the area as "Aboriginal Reserve". We both remember how shocked Koiki was and how determined that no-

⁸ Loos, informal discussion over the years. See also Beckett, "The Murray Island land case and the problem of cultural continuity", pp.19-23. A.C. Haddon (ed.) *Reports of the Cambridge Anthropological Expedition to Torres Strait*, Six volumes, Cambridge University Press, 1908-1935, especially Vol.VI, *Sociology, Magic and Religion of the Eastern Islanders*.



1. Koiki Mabo teaching students about Torres Strait Islander culture at James Cook University, c.1975. He is holding a *weris*, a fish scoop. Items of Aboriginal culture are in the background. (Mabo Collection, Department of History and Politics, James Cook University.)

one would take *his* land away from him. Subsequent events indicate that this was not mere bravado. Mabo also sat in on Reynolds' Australian History lectures and in 1984 participated in my Aboriginal and Islander History course. By this time it was somewhat like having Napoleon sit in on lectures on the fall of the First Republic.⁹

Mabo also attended seminars and conferences he considered relevant, entering confidently into the discussions. At one, the first conference on Aboriginal education held in North Queensland, he was so appalled at the comments being made by some of the teachers present that "he did his dance". He exploded into a physical and very vocal demonstration of his Islander identity as a rejection of the patronising and sometimes racist comments being made about Aboriginal and Islander children.¹⁰ As a result of this experience, Koiki Mabo, with his friend, Burnum Burnum, established the Black Community School which survived for twelve years against the odds of always inadequate funding, active opposition initially from some officers in the Queensland Education Department, and a hostile press campaign in the *Townsville Daily Bulletin*.¹¹ For some of these years it was the most interesting school in Townsville with parental and community involvement and the teaching of Torres Strait Islander culture and language. Bonita Mabo, Koiki's wife, who was the fixed centre of his turbulent life, worked as teacher's aide. There always seemed to be some parents at the school participating in some way in the education of their children.

⁹ See H. Reynolds (ed.) *Race Relations in North Queensland*, Townsville 1993, pp.2-3 for Reynolds' account of this interaction. The reason for the lunch is lost in time. It was possibly in association with the oral history project Reynolds and I were launching. Mabo was our first Research Assistant. Reynolds thinks it was just to have lunch. Personal conversation, 3 August 1994.

¹⁰ N. Sharp, *Springs of Originality among the Torres Strait Islanders: After the Storm Winds the Leafing of the Wongai Tree*, PhD Thesis, La Trobe University, Melbourne, 1984, Vol. II "Book of Islanders", p.136. I participated in this conference but was not in the discussion group where Koiki "did his dance".

¹¹ J. Morris, *The Black Community School*, unpublished assignment, Department of History and Politics, pp.9-11. See *Townsville Daily Bulletin*, 14, 17, 19, 21 September 1973; 6 April 1974.

The Black Community School placed Mabo in another situation where he had to extend his understanding of white Australian culture to maintain the existence of his school. He was Director of the Black Community School and President of the Parents' Council. He had to become executive officer because of the turnover of teachers. The school was subject to a number of reports by white and Aboriginal educationists to justify funding. Consequently, Mabo found himself on a rapid learning curve of his own as he interacted with enthusiastic educators like Anwyl Burfein, Sandra Renew, Geoff Coombs, Rob Renew, Julia Koppe, and Margaret, now Senator, Reynolds. Once again he was attending conferences and workshops. He also had to address various groups and approach "good uncles" (his term) for survival funds. His importance as an educator was recognised when he was invited to be a member of the National Aboriginal Education Committee (NAEC), an advisory body to the Commonwealth Education Department. On this body and on the National Aboriginal Arts Board, he appreciated the prestige and honour thrust on him, he was never a shy, retiring violet, but believed that he was the token Torres Strait Islander, the add-on in the title to denote an illusory, indigenous comprehensiveness: *Aboriginal and Torres Strait Islander*. Like many other Islanders, Mabo believed that Torres Strait Islander issues were being swamped by the sheer weight of numbers and political clout of his Aboriginal colleagues who, without malice, simply focused on their own issues.

The Black Identity that Mabo had enthusiastically espoused earlier had begun to splinter into two separate indigenous identities during the 1970s. This was a growing movement among Torres Strait Islander people culminating in the creation of their own flag in 1992 and their thrust towards a separate autonomy for the Torres Strait Islands. On 1 July 1994, the day on which Torres Strait Islanders celebrate "The Coming of the Light", this resulted in the creation of the Torres Strait Regional Authority (T.S.R.A.), as a separate administrative entity aimed

at Islander self-management.¹² Some are even demanding "sovereign independence", a separate nation. In 1994, a candidate for Chairman of Yam Island Council espousing this extreme position polled 50% of the vote against Getano Lui (Jun.), longtime Chairman of Yam, and Chairman of the combined Islanders' Co-ordinating Council. Getano Lui won the election on the casting vote of the Presiding Officer.¹³

Mabo had advocated a self-governing autonomy for the Torres Strait based on the Norfolk Island model in the early 1970s and had been strongly criticised by other Islanders. In 1976 at a conference on the Border Issue, he advocated "an autonomous region within the Commonwealth of Australia with its own sovereign rights and the right to secede". This time the suggestion was received with respect as one that could be considered seriously in a different forum.¹⁴ He was aware of the subsequent thrust for total independence but came to believe that the court action of the Murray Islanders which resulted in native title was the immediate and more important goal. What his position would have been after the 1992 High Court decision and the 1993 Native Title legislation must be conjecture because of his premature death.

There is no doubt that the destruction of *terra nullius* and the acknowledgement of native title has given the Torres Strait Islanders a greater bargaining power with both State and Federal governments which has resulted in a greater confidence in controlling their own future and a more insistent assertiveness, the Yam election being just one manifestation of this. Had Koiki Mabo not died of cancer in January

¹² "Address of Ms Lois O'Donoghue, Chairperson, Aboriginal and Torres Strait Islander Commission", at inaugural meeting of T.S.R.A., 1 July 1994. The copy was supplied by ATSIC through Senator Margaret Reynolds' office. T.S.R.A., *Corporate Plan 1994-95*, ATSIC, Canberra 1994.

¹³ *Townsville Bulletin*, 24 May 1994.

¹⁴ J. Griffin (ed.) *The Torres Strait Border Issue: Consolidation, Conflict or Compromise?*, Townsville 1976, pp.34-5. Personal discussion with Mabo revealed he had these views well before the 1976 conference which I attended. S.J. Kehoe-Forutan, *Torres Strait Independence: A Chronicle of Events*, Research Report No.1, Department of Geographical Sciences, University of Queensland, St Lucia, Qld, July 1988, pp.11-31.

1992, his would certainly have been an important voice in any debate over the future of the Torres Strait Islands. Mabo's understanding of both cultures was very sophisticated indeed in those areas he set out to master. He has taught me and other interested mainlanders a great deal about Meriam culture and history but freely admitted gaps in his knowledge and information he had once known but forgotten. His long absence from Mer also sometimes found him out of step with those who had remained behind. They had apparently accepted the Queensland Government's appraisal of him as an urban activist, a troublemaker, a friend of "reds", and a non-Christian. He said that he had been prevented from returning to Murray on a number of occasions. This could have been done by denying him a berth on the government cargo boat because of an alleged or actual lack of room.

His antipathy to the conservative Bjelke-Petersen Government was blazoned forth in 1973 when the Border Issue developed as the Commonwealth searched for a redefinition of the border between Australia and PNG as that country moved towards nationhood. The Councils of Yorke and Murray both formally refused him permission to visit to record oral history. Mabo believed the responses were orchestrated by Queensland's Department of Aboriginal and Islander Advancement.¹⁵ When his father, Benny Mabo, was ill in 1974, Mabo was granted permission to visit by the Chairman of the Council only on condition that he did not involve himself with "political affairs", a precondition he found infuriating and insulting.¹⁶ Benny Mabo died on 11 February 1975 before Mabo could make the journey. Mabo believed

¹⁵ Koiki Mabo, report on audiocassette of a visit to Thursday Island, April 1973, given to Loos by Reynolds. Mabo was collecting oral history for Henry Reynolds and Noel Loos. On this tape Mabo reads a telegram he had sent to George Mye, a leading figure on Darnley Island, advising him not to trust or support Bjelke-Petersen. See Griffin (ed.) *The Torres Strait Border Issue*, for a setting forth of the issues involved in the Border dispute, especially pp.34-5 for Mabo's views.

¹⁶ Chairman, Murray Island Council, to Edward Mabo, 17 October 1974, telegram: "Permission granted to visit your father stop You will never undertake political affairs stop Please acknowledge and confirm". In possession of Bonita Mabo. "Never" was interpreted by Bonita Mabo as meaning during his visit.

this decision also resulted from DAIA manipulation of the Councillors. His own people were making him pay a very heavy price for the political activism he had learnt on the mainland, which resulted in the confidence and communicating skills which would be so valuable to the lawyers preparing the Murray Island case.

In Townsville in 1981 the Townsville Treaty Committee (Mabo and I were Co-chairmen) and James Cook University Students' Union organised a conference, "Land Rights and the Future of Australian Race Relations". Koiki Mabo delivered an address, "Land Rights in the Torres Strait", which clearly spelled out his understanding of land ownership and land inheritance on Murray Island. With this understanding clearly established he repeated and elaborated upon his proposal for an autonomous region for the Torres Strait, within the Commonwealth but separate from Queensland, which would retain Torres Strait Islander customary law. Once again he referred to the Norfolk Island model. Barbara Hocking, then a Melbourne barrister, delivered a paper proposing that an Aboriginal group should consider a High Court challenge and detailed the international and Australian legal history which she believed would support such a claim. She also sketched in many of the major issues which would confront such a legal challenge. The Murray Islanders returned from a group discussion determined to take up the challenge. Eddie Koiki Mabo became the leading litigant.¹⁷

Mabo's ten-year involvement with the lawyers and advisers associated with this case led to a sophisticated understanding of its ramifications and of the legal process generally which impressed those who discussed it with him. He was certainly not overawed by what he was involved in and seemed always confident of success. Mabo had been regarded with hostility by members of the white Australian culture on a couple of occasions and had ridden out the opposition. This was

¹⁷ E. Olbrei (ed.), *Black Australians: The Prospects for Change*, Townsville 1982, pp.143-148: Eddie Koiki Mabo, "Land Rights in the Torres Strait", pp.207-222: Barbara Hocking, "Is Might Right? An Argument for the Recognition of traditional Aboriginal Title to Land in the Australian Courts". See also pp.222-223: Greg McIntyre, "Aboriginal Land Rights - A Definition at Common Law" and pp.247-248, Resolutions 20-24.

especially the case with regard to the creation of the Black Community School.¹⁸ As a member of black organisations on the mainland he was sometimes a stormy petrel in conflict with some fellow members and supported by others. Again he seemed to take this in his stride. However, the issue closest to his heart and the one for which he made enormous sacrifices of time, foregone wage-earning capacity, a disrupted family life, and the expenses arising from the travel he undertook in association with his claim, was the one that gave him the most savage and public slap in the face. In his 1990 report to the High Court of Australia to determine the factual basis of the claims made by Mabo and the other two surviving Murray Island claimants - the Reverend David Passi and James Rice - Justice Moynihan of the Supreme Court of Queensland declared Mabo an unreliable witness whom he would not believe in any matter associated with Mabo's own self-interest unless there was other accompanying evidence. His claims to inherit land on Mer were denied totally. Jeremy Beckett's balanced response to Moynihan's charges rejects his major conclusions: that Mabo wasn't the adopted son of Benny and Maiga Mabo; that Mabo's own land claims were invalid; and his explanation of Meriam inheritance custom was self-seeking. Beckett pointed out that Mabo's claims were in keeping with Meriam custom.¹⁹

I can add to Beckett's analysis. I met Koiki Mabo just after his biological father, Robert Sambo, had died in 1972. When I expressed my sympathy, he told me he was having difficulty understanding his own reaction because he did not think of Robert Sambo as his father. Benny Mabo was his father. I had already become interested in the process of Torres Strait Islander adoption and consequently the broad outlines of Mabo's response stayed in my mind.

In 1994, Bonita Mabo gave me copies of two letters she had received in 1960 from Koiki Mabo's mother, Maiga Mabo. Both are addressed to Bonita Mabo as "Dearest Daughter in Law". In the first, which predates

¹⁸ Morris, *The Black Community School*, pp.9-11. See *Townsville Daily Bulletin*, 14, 17, 19, 21 September 1973; 6 April, 1974.

¹⁹ Beckett, "The Murray Island land case and the problem of cultural continuity", pp.19-23.

the birth of Koiki and Bonita Mabo's first child, Edward Benjamin Mabo, Maiga Mabo "roused" on both for not writing to her and her husband, Benny. She continued:

Now you go in the month of Sept. to hospital. I'm so glad to hear this from my head to foot because he [Koiki] is only son for us ... If you finish from hospital you tell E.K. Mabo to bring that child and come to home. We wanted look our Grand Child and we want look you too Mrs Mabo.²⁰

In the second letter, Maiga Mabo rejoiced because "our Grandson was born. I'll read your letter for Dad". The letter is signed "Your Mum Mabo".²¹ The second letter concludes: "I am your Mam, Ama [Mother] Mabo." Neither of these letters were made available to the Moynihan Inquiry.

When Mabo's adoptive status was challenged in Queensland's Supreme Court in 1989, Mabo reflected on two of the allegations which he found offensive. In doing so he demonstrated the complexity of Torres Strait Islander adoption practices. His sister, Marinda Mareko, who was also adopted by Maiga and Benny Mabo, had informed the court that he had not contributed to the cost of Benny Mabo's tombstone on Murray Island. Mabo's response was that no one had informed him it was being erected so he was not able to. Moreover, he added, his sister had the use of his father's money. Clearly both were focusing on the expectation that he would contribute to Benny Mabo's tombstone because of his status as son. To Marinda, Koiki had always been her brother. At his Tombstone Unveiling in Townsville on 3 June 1995, Marinda had been accorded the honour of cutting the ribbons to allow entry to the grave site.

²⁰ Maiga Mabo to Bonita Mabo, present date [prior to September 1960], Box 2, File 1, MS8822, National Library: "The Papers of Edward Koiki Mabo". I have made some minor editorial changes to the texts of both letters. It is customary for Torres Strait Islanders of these generations to address each other quite formally in English.

²¹ Maiga Mabo, Murray Island, to Bonita Mabo, 23 November 1960, Box 2, File 1, MS8822, National Library: "The Papers of Edward Koiki Mabo".

The allegation that he had never been happy to be Sambo brought a response that illustrated the gulf between the western concept of adoption and that of the Islanders:

This is obviously not true at all. I am equally proud of both my biological parents and my adoptive parents as well who were responsible for and [were] designing my future which I am very proud about.²²

Having studied the Judge's determination and the minutes of evidence of the Inquiry, I can feel some sympathy for Justice Moynihan.²³ He would have needed the wisdom of Solomon and the luxury of hindsight to bring down findings that were beyond dispute. He was requested by the High Court in 1986 to examine the factual basis of the case put by the three surviving litigants. His major conclusion was that native title, a code of law regarding land ownership and inheritance, had existed prior to European colonisation and was believed by the Islanders to exist still. It was up to the High Court to decide if native title persisted in Australian law after colonisation, that is, after the assertion of British sovereignty.

Indeed the Queensland department administering Aboriginal and Torres Strait Islander affairs had seemed to agree and confirm it by negotiating with the Islanders over the use of land, at times compensating them for the loss of their land when it was necessary to build a kindergarten or other public facility, or finding another site if the Meriam owner refused to part with his land. Land disputes were settled according to Islander custom with the Queensland administrator in the

²² Koiki Mabo, *Diary*, 5 May 1989, Mabo Papers. I was introduced to Marinda Mareko in Townsville on 6 August 1995 at the National Library's launching of *Guide to the Papers of Edward Koiki Mabo*. She told me proudly, without any questioning or prompting from me, that she was Koiki's sister. It was a very brief informal conversation.

²³ Writ No.1594 of 1986, Supreme Court of Queensland, Justice Moynihan, Brisbane, between Eddie Mabo, David Passi, and James Rice, Plaintiffs and State of Queensland and Commonwealth of Australia, and *Mabo v. Queensland and the Commonwealth*, Supreme Court of Queensland, Moynihan J, 16 November 1990, *Determination Pursuant to Reference of 27 February, 1986 by the High Court of Australia to hear and determine all issues of fact raised by the pleadings, particulars and further particulars in High Court Action B12 of 1982*.

Torres Strait, Mr Paddy Killoran from 1947-1963, facilitating the exercise of Islander decision making and formally recording the decisions in the court records.

Justice Moynihan had also to proceed to adjudicate on the particular claims of the three surviving litigants and because of the complexity of Islander custom with regard to inheritance, there were nineteen counter-claims by Meriam relatives to Mabo's thirty-six claims. Seventeen were wholly uncontested; six were wholly contested; and thirteen partly contested. Each person asserting ownership of parcels of land seemed genuinely to believe in his or her case and justified it, pointing out how the disputed land had passed from one ancestor to another, going back in some cases over a hundred years to justify a claim. Although genealogies were submitted, much of the evidence was based on oral testimony of how a parent, grandparent, or more remote ancestor had said the land was to be distributed. Such claims attempted to take account of direct biological or blood descent, the bewildering frequency of Islander adoption and fostering of closely related children (and the difference these two processes could make to inheritance), the legitimacy (or illegitimacy if not adopted) of the children, and the wishes of the landowner in bestowing his or her land. This could be done by having a written will registered with the Murray Island Council (Benny Mabo had died intestate) or by a "say", an oral expression of intention to some relative or relatives who would report it as each had understood the intentions of the landowner. And then, of course, boundaries continued to be a great source of dispute as they had been in Melanesian societies before European intrusion. All of these issues were raised in the Supreme Court of Queensland in the dispute over what was or was not land inherited by Koiki Mabo. Needless to say, land disputes are still occurring in the Torres Strait today. In such disputes, past and present, participants claim all of the land they believe they own, regardless of how unreasonable this may seem to the other Islanders in the dispute, whose claims will of course seem equally unreasonable to their opponents. Even on his death-bed Koiki Mabo asserted his claim to the lands that were under dispute in the Moynihan inquiry. I personally found the sincerity of my dying friend convincing and very moving. To

date his land claims have not been rejected by the Murray Island Council. Indeed he is buried at Las on land whose ownership was under challenge. Many of his claims, however, are not disputed at all.

The High Court gave up the battle to determine which particular claimant owned which particular pieces of land. On 3 June 1992, it declared that, throughout Australia, native title had existed before European colonisation, "from time immemorial", and that it still existed unless it had been subsequently extinguished by the sovereign state, in this case Queensland, by land legislation that disposed of it freehold, or through leasehold title which was incompatible with the pre-existing native title. The High Court decided that, where "native title" still existed, it was up to "the natives" to determine who owned the land, as indeed Justice Moynihan had recommended in his report. This the Meriam had been doing "from time immemorial".

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Two-thirds of the Torres Strait Islander people live in mainland Australia, the single largest concentration being in Townsville. Mabo became one of the most prominent members of this community. At some time in the last years of his life he became again a practising Christian. This was obviously very important to him and no doubt was very satisfying to many members of the Torres Strait Islander community who have a very high rate of church affiliation, much higher than in white Australian culture. At the wedding of his daughter, Maleta, on 1 October 1988, the formal speeches were given by pastors in the various Islander churches, each one a mini-Christian sermon, at least to these white Australian ears. At one stage I was sitting talking to Koiki when a group of Islanders began singing Islander hymns. Koiki rushed off to join in. I could not help reflecting back to the opening of the Iris Clay Aboriginal Hostel in Townsville in 1975. I had been standing alongside Koiki when Canon Boggo Pilot led the hymn singing. Koiki joined in but said in an aside to me that he didn't really believe in it; he joined in the singing because it was Islander custom - like Christmas for white Australians. Koiki had moved back into the heartland of Torres Strait Islander

culture. At the same time Torres Strait Islander culture was moving towards the political and legal positions he had espoused so many years before.²⁴

Koiki Mabo determined early in his life to master white Australian culture and to deepen his understanding of his own. As he bridged both cultures, he suffered deep hostility and hurt on a number of occasions but bounced back with his usual resilience and confidence, even after Justice Moynihan's damning personal condemnation of him. At Koiki Mabo's funeral, Bryan Keon-Cohen, the Melbourne lawyer who had worked on the Murray Island case throughout the whole time it was before the court, paid tribute to the man who had led him patiently to an understanding of Meriam law and culture. His deep respect for Koiki Mabo was not merely provoked by the funeral but was clearly evident on other occasions:

I confine myself here to the Land Rights case. The most significant point to make is that without Eddie the case would probably never have begun. As Professor Loos has said, he was truly inspirational; the case began when Eddie gave a speech at a conference here in Townsville in 1981. He spoke of Murray Island customs and traditions concerning land and urged that something should be done to have those customs recognised in Australian law. That speech triggered a very long legal saga that changed the lives of many people. Certainly it changed my life and that of my family and may yet bring even greater reforms and hopefully improvements for the lives of all Murray Islanders...Throughout this last decade Eddie demonstrated to me many fine qualities which will be well-known to you all. But for me and the lawyers we particularly remember his friendliness and hospitality, his initiative and originality, his courage and quiet determination, his

²⁴ The Iris Clay Hostel was opened on 12 July 1975. I thought Koiki's return to the Christian faith was evident at Maleta Mabo's wedding on 1 October 1988. Bonita and Maleta think it occurred as late as 1990. I can remember Koiki inviting me to Torres Strait Islander church services which were open to all their denominations. In my mind, this seems earlier than 1990, and not long after the October 1988 wedding. In 1980, when interviewed by Nonie Sharp, Koiki Mabo had remarked: "I don't place very much emphasis on hymns; it's not my thing." See Sharp, *Springs of Originality among the Torres Strait Islanders*, vol.II, p.137.

intelligence and astonishing knowledge and memory of his people, his island, its history, customs and traditions. Above all I remember his deep commitment to correcting historical wrongs, some very personal, and to achieving recognition of traditional land rights of his family and his people. He was in the best sense a fighter for equal rights, a rebel, a free-thinker, a restless spirit, a reformer who saw far into the future and far into the past.²⁵

The Koiki Mabo I knew was all of these things and certainly saw "far into the future and far into the past".

²⁵ "A Tribute to Koiki Mabo", *ABC Law Report*, 3 March 1992. The funeral proceedings were recorded in full by Townsville Aboriginal and Islander Media Association.