An extract from *Mabo in the Courts: Islander Tradition to Native Title: A Memoir*

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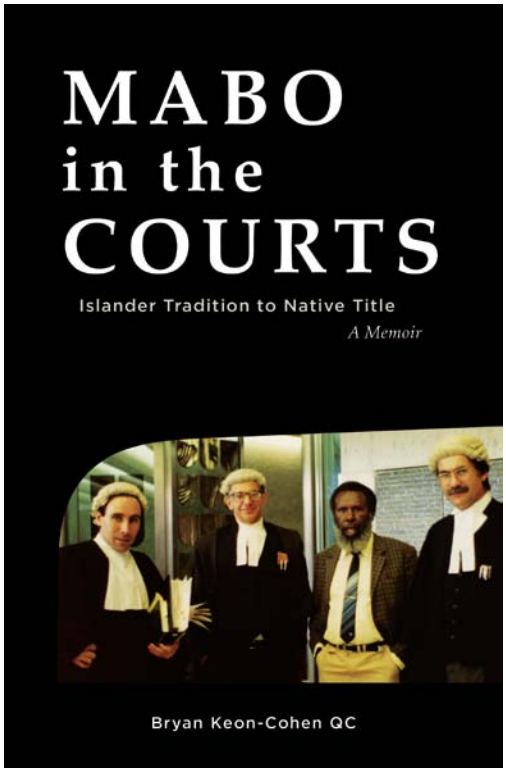
Much has been written about the *Mabo* cases since 1992. This ever-expanding body of literature embraces many disciplines and fields: law, anthropology, history, linguistics, politics, film-making, race-relations, and so on. *Mabo in the Courts* is, however, a personal account, a memoir intended for the general reader.

I record things that happened to me, and events that occurred, from my point of view. I include anecdotes, assessments and incidents from both in and out of court. Parts of the story deals inevitably with legal issues and analysis, and court procedures.

In one sense, this book is about a law case concerning rights to property: no more and no less. Scores of such cases dealing with the vexed question of Indigenous land rights have been heard in the common-law courts of the former British Empire. From the Indigenous perspective, some of these cases were won, some lost. *Mabo* was the first to succeed in Australia, though not the first of its type in this country. *Mabo* built upon the *Gove Case* of 1971 – a legal failure, but a pioneering endeavour which was not appealed to the High Court.



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Twenty years after the *Gove Case*, the times, composition of the High Court, and key players had changed, but not the central issue. At the time of writing, another twenty years further on, the pendulum seems to have swung again: all the way back to the political denials and conservative judicial philosophies – at least on this issue in the High Court. These High Court developments during the 1980s and 1990s, and other post-*Mabo* developments, are mentioned briefly… The book is also about a significant event in the life of the nation, and the nation's painfully achieved, and sadly inadequate, response. The event – the successful outcome delivered in two judgments of the High Court in 1988 *Mabo (No 1)* and 1992 *Mabo (No 2*) – created a real opportunity for the community through its elected representatives, and those who lead, or manipulate, public opinion, to right a wrong: to introduce a just scheme to recognise, on a non-racially discriminatory basis, this ancient, but now legally enforceable, property right. In my view, the nation has so far squandered this opportunity, though some advances have been achieved through the enactment of the *Native Title Act 1993.*

The search for justice provided a simple, compelling motivation for the plaintiffs' legal team throughout the *Mabo* litigation; similarly for this book. This motivation is easily comprehensible by most, but some had other motives and took different stances, especially in Queensland and on Murray Island. These too are mentioned. In a test case such as this, with issues of national significance at stake, people with vested interests who oppose or support the cause can take various stands. Some when under pressure can react in strange and unexpected ways; others, ever predictable, never abandon their comfort-zone, which can sometimes include bigotry and ugly racism. While events open to all of these characterisations are mentioned, many are not. I take the view that the full history cannot yet be told.

The quest for Indigenous justice in this country continues on many fronts. Twenty years on, opposition to *Mabo* and the native title reforms triggered by this case still festers.

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