Aboriginal people have invented a theatre of politics in which self-representation has become a sophisticated device, creating their own theories or models of inter-cultural discourse such as land rights, self-determination. "White Australia has a black history" and so on. (Marcia Langton) [1]

Aboriginal and Torres Strait Islander Australians, who at the 1991 Census numbered 265,378 in a total Australian population of 16,850,282, are often framed as victims in the media. A 1993 study by the Australian Broadcasting Authority, *The People We See on TV*, found that 76 per cent of people surveyed thought that Aboriginal people were represented on television as “victims of society” and that there was a lack of “positive, constructive images” of them [2]. But that is not the whole story about the imaging of Aborigines and Torres Strait Islanders on television and video. In the last decade or so increasingly sophisticated use has been made of the electronic image via film, and especially television, to promote the political, social and economic advancement of Aborigines and Torres Strait Islanders in Australian society. Television and video documentaries are being produced to promote Aboriginal issues and events are being staged which are designed to dramatise Aboriginal issues in a way calculated to attract media, and particularly television, attention [3].

Each age writes its history for its own purposes. Groups seek to present their interpretations, their imaging of the past to fight present political battles; as part of the struggle for land rights Aboriginal issues activists are seeking to demonstrate the legitimacy of their claims through a revision of the historical record; their message is: *White Australia has a Black Past.*

Television and video historical documentaries are being used to get this history out into the public domain and image it in ways most likely to change opinion and attitudes and impact on public policy formation. The target audience is both national and international. The rights of indigenous minorities now have a prominent place on the international issues agenda. 1993 was the International Year of the World’s Indigenous People. Aborigines and Torres Strait Islanders network formally and informally with other indigenous people, not least at sessions of the UN Working Group on Indigenous Populations in Geneva. The United Nations is on the verge of ratifying a Declaration of the Rights of Indigenous People. There is a move for a permanent forum for indigenous peoples in the UN system. International Non-Government Organisations (NGOs), such as Amnesty International and the World Council of Churches, keep Australia’s indigenous affairs under close scrutiny. In foreign affairs, Australia as a
middle-ranking power seeking to play a role as a good international citizen, with a focus on human rights, is sometimes seen to be vulnerable on the Aboriginal question. The Public Affairs Division of Australia's Department of Foreign Affairs and Trade pays assiduous attention to Aboriginal issues in its overseas information and cultural relations activities. Aboriginal issues activists take account of this vulnerability in planning their public relations strategies.

In thirty or sixty minutes an historical documentary can combine a potent mix of pithy extracts from arguments of academic historians, lawyers, anthropologists, recycled library footage, archaeological discoveries, oral traditions and testimonies, images of landscapes and mood music, poignant photos from the past and target a much wider audience than will ever read the *Aboriginal Law Bulletin* or the historical writings of Henry Reynolds [4]. A video can be precisely targeted at selected groups and opinion leaders; copies can be mailed to key players and to sympathetic interest groups in the public policy debate on a particular issue; and, in the longer term, used, often with accompanying printed material and as a teaching resource, in schools, universities and colleges to influence the opinions and attitudes of a new generation of Australians.

**Prime Time Activism**

Aboriginal activists have learned the art of prime time activism [5]. As Gary Foley [6], said in 1993 in the context of the campaign to keep the Melbourne Northlands Secondary School open despite a government closure order, “I'll show you how to get these bastards [the media] in. Arrange a stunt for them” [7]. Foley claimed that this was the choice Black radicals made in the early 1970s:

> If Australians ever want to look back in an intelligent, intellectual way—which means about one per cent might—they'll realise that if we hadn’t cottoned on to that method of getting our message across, we would have had to have used the sort of methods employed by people in other parts of the world. I refer specifically to the Palestinians. [8]

The erection of an Aboriginal tent embassy on the lawns outside Parliament House in Canberra in 1972, signalled the start of a new, very contemporary campaign to put land rights on the national political agenda. The land rights campaign had had several set backs since the euphoria of the 1967 referendum which had given the Federal Government power to make laws for Aborigines. In 1971 *Murrumpum vs Nabalco Pty Ltd*, popularly known as the ‘Gove land rights’ case, had failed to overthrow the doctrine of *terra nullius*, that Australia was an empty and barren wasteland at the coming of European settlement. In January 1972 the Federal Coalition Government of William McMahon had refused to recognise the Aboriginal demand for inalienable rights to land. A handful of angry and frustrated young Aborigines meeting in Sydney decided on more direct protest methods. An Aboriginal writer, the late Kevin Gilbert [9], suggested a peaceful land rights demonstration outside Parliament House in Canberra. The idea of packaging it as a tent embassy came from Tony Coorey, one of the original four who journeyed to Canberra and put up a borrowed beach umbrella in lieu of a tent. The idea took off. The embassy proved to be a physical and psychological rallying point for Aborigines from all over Australia. The Aboriginal flag appeared for the first time. Tents multiplied. During the six months that the protest lasted, over two thousand Aborigines were said to have made their way to Canberra. The land rights movement was on its way. When police removed the tents they were repeatedly re-erected...
providing some dramatic footage for television infotainment and for the 16-mm documentary film which chronicled the tent embassy [10]. The strategy succeeded brilliantly and has been imitated ever since. Poet Judith Wright recalls in her memoir the work of the Aboriginal Treaty Committee (1979–84):

As winter drew on, photographs and TV clips showed the increasingly tattered tents still bravely facing Canberra’s winter. Tourists, foreign visitors, and the embassies of other countries were being shown Australia’s worst face. [11]

Aboriginal lawyer Paul Coe, recalls, “We were getting a big exposé of the situation of Aboriginal people in Australia and the Federal Government was being criticised in the world press—The New York Times, the London Times, Japanese newspapers, TASS Soviet newsagency and even The Peking Daily ran stories” [12].

Television and film coverage were later recycled in historical documentaries. In 1992, the 1972 events were the subject of the Australian Broadcasting Corporation (ABC) television documentary, Tent Embassy, in the series, True Stories [13]. The 1972 tent embassy had self-conscious echoes in the protest at the old Parliament House in Canberra in 1985 over the Hawke Labour Government’s proposal for national land rights legislation recorded in the video documentary Our Land is Our Life (1985) [14].
Events which attracted ready-made national and international media coverage were (and are) prime targets. When Queen Elizabeth opened the New Parliament House in Canberra in 1988, Aboriginal activists and their supporters faxed press releases to national and international media, including the BBC, drawing attention to the protest which they would stage outside the building during the opening ceremony. The protest, one feature of which was Aboriginal flags attached to helium balloons, received extensive media coverage. The Brisbane Commonwealth Games in 1982 and the Bicentenary celebrations in Sydney in January 1988 are other examples of telegenic national events successfully targeted by Aboriginal issues strategists. News footage of Aboriginal demonstrations during the 1982 Commonwealth Games in Brisbane was later recycled in the video The Whole World is Watching [15]. The protest is described in publicity for the film as:

the manifestation of 200 years of Aboriginal anger and disgust at the exploitation and genocide resulting from white colonisation of Australia. It is a protest for land rights and civil rights, for health, jobs and housing a protest for survival. [16]

In January 1988 when the Prime Minister, Robert Hawke, launched John Moloney's Penguin Bicentennial History of Australia, an official history funded by the Australian Bicentennial Authority, before an audience of television cameras and newspaper photographers at Botany Bay, an Aboriginal protester hurled the book into the harbour; another shouted at Moloney that he was lying when he said in the book that the last Tasmanian Aborigine died in 1888. Prime Minister Hawke apologised to the Aborigines and signed copies of the book, including the wet copy that was fished out of the harbour [17]. Events staged by the Aboriginal community in Sydney on 26-27 January 1988 were the subject of a 16-mm film, Australia Daze [18] and One People Sing Freedom [19], a 55-minute documentary produced by the Aboriginal Television Unit of the ABC and financed by the Department of Aboriginal Affairs [20] as part of its public awareness program introduced in 1983-84 and expanded in 1984-85 to overcome mounting criticism of government expenditure on Aboriginal advancement programs and "promote a better understanding in the wider community of the Aboriginal situation" [21]. Public opinion research conducted for the Department had shown:

that there was little knowledge of the historical reasons for the current Aboriginal situation, that there was no acknowledgment of injustices by earlier generations and therefore there was no sense of guilt or need to atone, or compensate, for dispossession and dispersal resulting from these injustices. [22]

Our Land is Our Life

The 1972 Tent Embassy contributed to the passage of the historic Aboriginal Land Rights (Northern Territory) Act 1976. The legislation had been drafted under the Whitlam Labour Government defeated in the 1975 election, but passed with minor amendments by the Coalition Government of Malcolm Fraser. The legislation was confined to the Northern Territory as traditionally power over land rests with the states. While some states had passed limited land rights legislation the states, with the exception of South Australia and to a lesser extent New South Wales, had generally been reluctant to follow the Commonwealth lead in introducing land rights legislation
as strong as that in the sparsely populated Northern Territory. Tasmania and Western Australia had no land rights legislation.

When Fraser’s Coalition Government was defeated at the March election in 1983, land rights supporters had great expectations. The new Labour Prime Minister, Robert Hawke, had talked of national reconciliation between the Aboriginal and non-Aboriginal population of Australia. The party had a commitment in its policy to obtain uniform national land rights based on five principles which included inalienable free hold title, control over mining on Aboriginal land, protection of Aboriginal sites, access to mining royalty equivalents and compensation for lost land. However, after eighteen months in office the Hawke Government found it couldn’t deliver in the face of fierce opposition over the mining commitments from the mining lobby and from its own party members in Western Australia where the Burke Labour Government was facing an election in early 1986. The Federal Government then produced the “preferred model”, a proposal for national uniform land rights legislation, which would have given Aborigines a weaker control over mining than was the case under the Northern Territory Land Rights Act and, the Aboriginal lobby said, would only honour one of the five basic principles promised in party policy.

The Northern Territory Land Councils, alarmed at the weakened version of land rights set out in the “preferred model”, campaigned vigorously against it. In the 1980s the Land Councils, created as a result of the 1976 Act and funded by the Federal Government, were at the forefront of the land rights struggle [23]. Attracting highly articulate and committed staff, Aboriginal and non-Aboriginal, the Land Councils soon established expertise in the practice of political public relations in the public policy arena. Their principal vehicle for providing some leadership and cohesion to the land rights struggle was their monthly *Land Rights News* [24]. A leading Aboriginal policy strategist of the 1980s was a former Catholic priest, Patrick Dodson, who joined the Central Land Council in 1983 and became its director in 1986. In 1988–89 he was acting deputy chair of the Aboriginal Development Commission; in 1989 he became Royal Commissioner to inquire into the underlying issues of Aboriginal deaths in custody in Western Australia. In 1992 he gave up his position as executive director of the Kimberley Land Council in Western Australia to become chair of the Council for Aboriginal Reconciliation. Other members of the Central Land Council included a non-Aboriginal, Warren Snowdon, since July 1987 the Federal Labour Member for the Northern Territory, and Marcia Langton, then the Council’s land claims officer. Langton went on to head the Northern Territory Aboriginal Issues Unit of the Royal Commission into Aboriginal Deaths in Custody and is at present Chair of the Council of the Australian Institute for Aboriginal Affairs and a researcher on Aboriginal land claims for the Cape York Land Council [25].

Part of the Land Councils’ campaign strategy was a demonstration outside Parliament House, with Aborigines coming from all over Australia [26]. It would echo the 1972 tent embassy, designed to produce a media happening with good visuals and sound bites for the evening television news bulletins. The campaign theme, ‘Our Land is Our Life’, was also the title of a campaign video produced by the Land Councils.

*Our Land Is Our Life* is a typical compilation documentary, the electronic version of scissors and paste, combining a voice-over linking together recycled film, on camera statements, photos, paintings, maps, printed material and appropriate music, interviews and expert witnesses. The film combines sequences from two videos: one about the Canberra protest made by Ralph Rigby [27], and another about a tour of Aboriginal communities by the chairmen of the Northern Territory Land Councils to consult

FIG. 3. Geraldine Tungatulum at Nguiis, Northern Territory (Our Land Is Our Life, 1985). (Courtesy, Northern Territory Land Councils.)

about "the preferred model" made by Remote Area Media. Another source of film is John Pilger's television documentary, The Secret Country (1985), made for Central Independent Television in the UK [28].

The first part of the film seeks to demonstrate the close relationship of the Aboriginal people of the Northern Territory with the land. Images of landscape and people emphasising their mystical link with the land and the antiquity of that relationship are presented. The camera lingers on icons like Uluru (Ayer's Rock), Kakadu and Ubiri Rock with the musical accompaniment provided by the Ernabella choir and the Warumpi band. The message is that the people who live amongst this landscape have the oldest living culture and religion on the planet. "Don't take our country or we will
die. How can you buy my grandfather?” pleads an elderly Aboriginal woman. At Lake Evella, Gandalal explains:

Our law is always the same. It passes from generation to generation. The old people who are dead had one Aboriginal law. One law ... just one law. This land is our land, the trees and everything. We don't want it damaged. We don't want it destroyed. We will pass on our land and our law to our children and they will pass them to their children. We will not change our law. It cannot be changed. Old people will die but the law will stay the same. The land around here has always belonged to us. European people have never settled in this area.

Off camera narrator, Ralph Rigby, in introducing the subject of the film—Aboriginal
opposition to the proposed uniform national land rights legislation, sets the land rights struggle in the context of the historiography of resistance. Aboriginal people, dispossessed and refugees in their own land—imaged by an old photograph of Aborigines chained together—have always been fighting for their land throughout the 200 years of white settlement. "In the last two decades we have intensified our struggle ..." The battle is the same, "although the weapons and the battleground may be different". For a short time since the passage of the Northern Territory Land Rights Act, says the narrator, Aboriginal Australians have had "a degree of autonomy", as a result of the struggle they have waged. Recycled footage from earlier demonstrations including the tent embassy is used to signify the struggle. The preferred model would set Aboriginal advancement back twenty years.

In Canberra, the street theatre begins with footage of Aborigines arriving in "cold and inhospitable Canberra" by cattle trucks, buses and cars from all over Australia. The narrator talks of the success of the 1972 tent embassy: "Back then we forced Australia and the world to take notice of our cause". It was the Labour Government of Gough Whitlam which had first heeded their call for justice and drafted the 1976 land rights legislation. Now, a decade later, they were back at Parliament House again calling for justice. The march across Canberra to Parliament House begins on the shores of Lake Burley Griffen. A seasoned activist, West Australian Rob Riley, former chairperson of the National Aboriginal Conference, is shown, megaphone in hand, addressing the crowd of about a thousand protesters [29]. The Government has backed down on the five principles because of pressure from the mining and pastoral interests. The strategy that has been decided on, says Riley, is not to send a delegation inside Parliament House but to demand that "Bob Hawke come outside and talk to us".

The demonstrators with flags and banners process towards Parliament House chanting slogans and the litany: "What do we want? Land rights! When do we want it? Now!" The police are videoed taking up positions. The narrator points out that the protest had begun weeks before in the Northern Territory when the chairman of the Northern Land Council, Galarrwuy Yunupingu [30], Stanley Scrutton, chairman of the Central Land
Council, and Jimmy Tipungwuti, chairman of the Tiwi Land Council, had gone on a
tour of Aboriginal communities accompanied by the video camera to consult with their
constituents about the preferred model: “We feel we should come to you to make sure
that we get your word to take to government”, Yunupingu tells one group of Aboriginal
elders. Aboriginal people from different parts of the Territory give their responses on
camera: Walumarri at Gapuwiyak, Daisy Yarmirr at Minjilang, Ken Gunbuku at
Gapuwiyak, Max Stewart and Gus Williams at Hermannsburg, and Cecil Johnson at
Lajamanu. A shot of a plane flying low over the Northern Territory is accompanied
by the off-camera murmur of Mary Yaramirr: “we are not descendants of English
prisoners ... we are the past, present and future”.

George Djilminy at Milingimbi says “the government is trying to trick us”. Geraldine
Tungatulum at Nguiu is concerned about the future of the children. Mudjidji at
Numbulwar wants to stick to the 1976 Act. At Goyder River Nora Bindul says that she
doesn’t want anyone to go on her land unless she gives them permission. At Katherine,
Alice Mitchell, who has a weak heart and breaks down on camera, says she doesn’t
want to be pushed about by whites. Peter Woods at Kalano says that in the past people
were shot like dogs for land. This evidence of the views of traditional leaders in the
Northern Territory, collected in a tour of twenty-one communities in twelve days, was
the first time video had been used in this way to record and present the views of
traditional people as a medium of political action [31].

The video cuts back to the front of Parliament House where prominent Aboriginal
activists address the crowd, and, for the first time, Aboriginal elders speak in their own
language on the steps of Parliament House. Urban Aboriginal activist, Shane Houston,
chairperson of NAIHO (National Aboriginal and Islander Health Organisation) shouts
through a megaphone:

Aboriginal people started to die when white people came to this country and
we’re still dying. Land rights isn’t about money. Land rights isn’t about taking
people’s back yards as these racists and rumour mongers in this building
would have you believe. Land rights is about life, our life.

Pat Dodson from the Federation of Land Councils tells the crowd, via a megaphone,
that Aborigines are a people and always have been a people with their own law, political
organisations and ways of socialising their children and bringing them up. They want
the Minister for Aboriginal Affairs, Clyde Holding, to know that they don’t want the
preferred model which takes away all the rights they have been granted by the
colonialist government. “We have sovereign rights that have never been extinguished or
given away. They can’t handle that concept”, says Dodson.

Some conflict footage for the prime time evening news bulletin on CTC 7 Canberra,
edited into the narrative, is created when Roger Shipton, Opposition Spokesperson for
Aboriginal Affairs, comes out of Parliament House to attempt to speak to the
protesters; he is shouted down; the police ask him to leave, fearing “a break of the
peace”; and a small group of demonstrators try to break into Parliament House.

The “break of the peace” is followed by a series of black and white illustrations of
white settler violence against Aborigines in the nineteenth century and then by a
passionate on camera protest against the legal fiction of terra nullius, the idea that
Australia was no one’s land at the time of white settlement. According to Marcia
Langton:

I think it’s a very calculating attitude which makes an entire nation of people
write out 200 years of history and speak only about imperial history. They
speak about the pioneers, the brave white pioneers, the brave women who settled the country as if we didn’t ever exist; and all of that history is based also on the legal fiction which established for them that they legitimately owned this country. They called it terra nullius, in other words, empty continent. The law says that we did not exist in 1788. Therefore the continent was empty, uninhabited, waste land and therefore the British had a right to occupy it; so you see there have never been treaties here because we didn’t exist, legally.

Another dramatic insert of passionate advocacy comes with extracts from Pat Dodson’s speech to the Canberra Press Club, also in May 1985:

The fact is that the Government’s preferred land rights model is just another obstacle in the long struggle. We will not continue to sit at the foot of your table and watch you grow fat off our land. We will not continue to accept the scraps which you choose to throw down to us and then threaten to take away. We will not give up our struggle for recognition, independence and dignity. Like our forbears we will not die. We will not go away. Our particular cultural genius has roots which reach back into time beyond your recorded history and continue to sustain us.

Back at the demonstration Gary Foley claims “a great significant moral victory” because Hawke has refused to come out and speak to them. The Minister for Aboriginal Affairs later talks to the protesters at a camp they have set up outside Canberra. At the Press Club Dodson concludes his peroration: “If this nation is to even attempt to wear the mantle of maturity, to have any sense of pride and independence, to claim that it is a just and fair society you must first negotiate with us, the traditional owners of this country, the people whom you sought to conquer”. There is an on-camera burning of a copy of the preferred model; and the film concludes with Rigby saying that “Canberra was just a part of our struggle”. After the Canberra protest and emphasising the globalisation of the politics of indigenous peoples, “a delegation from our Federation of Land Councils went to the United Nations joining other indigenous people from around the world. Australia was condemned for ignoring our just demands”, says Rigby. “We will not be silenced. We will not give up our struggle. We have prevailed against all odds and we will continue to do so”.

The demonstration was reported in the Canberra Times by newspaper columnist Stewart Harris, whose summing up of the significance of the happening is repeated by Rigby on the film’s soundtrack:

Black solidarity was borne last week. The force of the Aboriginal movement now has great momentum; people came from all over Australia. Harris also wrote. I sensed an Aboriginal nation being borne; the tribes and clans of the people who owned Australia before 1788 have become united in the past decade as never before. Their growing unity has been the result of a common experience of frustrated expectation. How right he is.

Harris had earlier documented the tent embassy in This is Our Land (1972) [32] and was a foundation member of the Aboriginal Treaty Committee, a non-Aboriginal group formed to push the idea of a treaty on to the political agenda, established in 1979 by Dr H.C. Coombs [33]. Harris promoted the idea of a treaty in Its Coming Yet... An Aboriginal Treaty Within Australia between Australians (1979) [34]. The Aboriginal Treaty Committee succeeded in getting the idea of a treaty a place on the political and
academic agenda when a Senate Committee was appointed to inquire into the feasibility of a treaty or 'makarrata'. The Committee found that there was not yet sufficient popular will for such a move; more education of the Aboriginal and non-Aboriginal community would be required to get the necessary shift in public opinion. The Committee had then been disbanded in 1984.

*Our Land Is Our Life* was sent to politicians in Canberra, to unions, schools and church groups as part of a targeted public relations campaign using not television but video as the medium. The Federal Government did not proceed with uniform national land rights legislation. It is assumed that the campaign orchestrated by the Land Councils and which included this video must have had some influence on the decision not to proceed. In addition to the Land Councils' opposition there was a leaked Australian National Opinion Poll (ANOP) for the Department of Aboriginal Affairs which showed a lack of support in the wider community for the move. "Around 50% of respondents supported the notion that access to land would assist cultural and racial survival for Aborigines but only around 25% strongly supported the granting of land rights". This finding not only contributed to the Federal Government's backing away from the planned national uniform land rights legislation but also the idea of a treaty [35]. The Aboriginal treaty idea was put back on the political agenda in 1987 by Prime Minister Hawke when he spoke of his hopes for some sort of understanding or compact [36].

**Framing Mabo**

With the failure to achieve national land rights legislation based on the five principles, many land rights activists were pinning their hopes on the outcome of the case, *Eddie Mabo and Ors vs The State of Queensland* commenced in the High Court of Australia in May 1982. Eddie Mabo and four other Meriam people from tiny Murray Island in the eastern Torres Strait, inhabited by about 400 people of Melanesian origin, set out to prove that their traditional land rights had not been extinguished by the annexation of the islands by the Queensland Government in 1879; that the Meriam people were customary owners of the land; and that they had been in continuous occupation since time immemorial and continued to practise their customs and laws.

The case had much greater significance than to determine if native title had survived the annexation of Murray Island to Queensland. It was another attempt to overthrow the doctrine of *terra nullius* and reverse the decision in the Gove land rights case, when the people of Yirrkala were unsuccessful against the mining company, Nabalco, in the Northern Territory Supreme Court. Native title had then been argued and rejected by Mr Justice Blackburn. Blackburn found that although the Aboriginal people had their own system of land law, because they didn't cultivate, buy and sell or exclude others from their land, they had no form of title others were obliged to recognise. Mabo was considered by land rights activists to be an excellent test case for the recognition of native title, as the Murray Islanders, unlike Aborigines in much of the mainland and Tasmania, had been demonstrably in continuous occupation of the islands since white settlement.

Before the Australian High Court found in favour of the plaintiffs in June 1992, a television documentary about the case *Land Bilong Islanders* (1989) [37], was shown twice on ABC television, on 26 July 1990 as the second in its *First Australians* series and on 12 February 1991 [38]. Written and directed by Trevor Graham, the documentary was pre-purchased by the ABC and Channel 4 with other finance coming from Film
Victoria and the Australian Film Commission. It has reached an international audience through being shown widely on television stations overseas and at international film festivals—including the Edinburgh Film Festival and most recently, the Dream Speakers in Canada.

*Land Bilong Islanders* is constructed around a fact finding hearing by Mr Justice Moynihan of the Queensland Supreme Court on Murray Island in May 1989 to hear evidence and to visit sites of significance. The role of the Queensland Supreme Court was to determine the facts surrounding the claim of the plaintiffs, Eddie Mabo and others, that they were the traditional owners of their lands. The High Court would then judge their legal validity and whether those claims had any status in Australian law. The filming of the visit of the court on Murray Island made it possible for the plaintiffs and other Islanders to put their case for native title not only to the court but also to a wider national and international audience assisted by filmic techniques like the interweaving of old film footage and still photographs, and the reciting of oral traditions to reinforce present testimony about land law, custom and religion. The compilation documentary format transcending time and space enables what is a highly complex legal argument to be presented in a dramatic and engaging manner via the potent medium of television to a far larger audience than would ever pore over a complex legal article in newspaper or academic journal. From a public relations perspective it could be seen as sympathetic...
publicity for the Islanders at a crucial time in the life cycle of the public policy debate on Mabo.

The hard core of the legal argument in support of Eddie Mabo's claim is presented through televised extracts from the ABC radio’s Law Report in which its presenter, John Fayne who also narrates Land Bilong Islanders, puts several set-piece questions to Professor Garth Nettheim of the University of New South Wales Aboriginal Law Centre. Professor Nettheim, is a pivotal figure on the academic wing of the land rights movement; he has edited and contributed to the Aboriginal Law Bulletin published by the Centre which has been central to the progression of the academic and legal debate on land rights, the overthrow of terra nullius, and Aboriginal treaty and sovereignty issues in the public policy arena since the early 1980s [39].

In an opening scene, Torres Strait Islander Fio Kennedy, adviser to the plaintiffs’ counsel, takes off the head of a fish with a knife, saying with a glint in her eye that that is what would have happened before first contact if an unauthorised person had stepped on to someone else's land. “But today we have to use their kind of weapon and so we took them to court”.

Establishing sequences show the court in session on Murray Island and the legal participants in courtly dress. More time is spent showing the court viewing sites with plaintiffs James Rice and Eddie Mabo, and other Islanders. The court party are shown the heaps of rocks marking boundaries to distinct portions of land. Islanders explain on camera how they have inherited this land from their ancestors. Counsel for the plaintiff, Greg McIntyre, who dismisses the Blackburn decision in the Gove land rights case as wrong in law and history, shows a map he has drawn up, clearly marked with evidence from the islanders.

Extracts from ABC radio news bulletins are used to document the unfolding of events during the visit. One extract announces that Eddie Mabo has made an additional claim to the sea bed and reefs surrounding the island; this is being opposed by the Commonwealth, the second defendant in the Mabo case. Recycled footage is then
edited in showing Islanders using fishing nets earlier in the century; this is juxtaposed with a more recent ceremonial dance in which Islanders are using similar artefacts.

Nettheim, via an edited extract from the *Law Report*, explains how the court might deal with the problem that oral tradition is not recognised as evidence in the Australian legal system:

*Fayne:* Garth, our courts don't recognise an oral tradition. We use evidence and things that are written down, documents. How is the court going to grapple with that issue in this case?

*Nettheim:* There is in fact a rule in our laws of evidence called the hearsay rule, which means that you can't prove something simply on the basis that somebody else told you. So, that is going to create a real problem for the plaintiffs in this case unless they try to argue that when you are dealing with an oral tradition then this sort of evidence has to be admissible.

The film cuts to the eloquent Torres Strait Islander, Flo Kennedy, saying that the
spirits of their ancestors are still alive. The land is theirs because their ancestors have
told them so. "Our legal documents are our ancestors that [sic] told us these things".

Also central to the court action is the Islanders' observance of the octopus god, Malo,
in their Christian worship. The Queensland Government is arguing, says Fayne, that
the Islanders' conversion to Christianity supplanted Malo worship. London Missionary
Society missionaries first took up residence in 1872 and converted the Islanders to
Christianity. Six Christian denominations now cater for the tiny population. According
to anthropologist Jeremy Beckett, Malo was the "first casualty of European contact"
[40]. The Islanders say the octopus god, responsible for uniting the Islander's eight
tribes, gave them laws which still govern the land. God sent Malo to the island before
the coming of the light (Christianity) says one of the plaintiffs, Anglican priest, the Rev.
Dave Passi. He had been told by his grandfather and others that the Anglican Church
was the fulfilment of Malo worship. Filmed evidence is then provided of the continued
existence of elements of the Malo cult in the shark dance performed for the court, with
older black and white film of Malo rituals including an initiation edited in.

The plaintiffs' counsel came across written evidence of the laws of Malo, a journal
passed on by a former chairman of an island council to his son. The journal contains
rules for planting and the laws of Malo handed down in the oral traditions of the
Islanders. Counsel display the journal on camera. In Malo's law a man cannot put a
foot or a hand on another man's property without his permission, in Meriam Mer: "Tag
mauki mauki, tetar mauki mauki", as Kaba Noah, an elderly Islander, explains on
camera.

Fayne: Isn't the issue in this case that the indigenous people whose laws goes
back for 40,000 years are saying why should our law be ignored or overlooked
and your law of 200 years be taken instead?
Nettheim: Once the land became British not only did the British Crown,
subsequently the Australian colonies, acquire sovereignty, that is the power to
govern, but, as part and parcel of the same deal, all the pre-existing rights
under the pre-existing legal system simply got snuffed out. What the plaintiffs
are arguing is that we should recognise legal pluralism i.e. that the pre-existing
culture, the pre-existing law, should be recognised and that they can be
accommodated in the Australian legal system.

Boundary disputes are put forward as another strand of evidence to prove continuity of
land ownership. An ABC news bulletin making mention of a boundary dispute between
Eddie Mabo and another Murray Islander is edited into the sound track and the dispute
is dramatised by having the disputant make his claim on camera as Eddie is seen
showing the court some land he is claiming. Records are produced of land disputes
brought before the land court established by the Queensland Government in 1898. One
of the Counsel points to a record of a complaint brought before the court in 1930 where
a man was claiming that he had not received the rightful portion of land from his
parents.

In the final inter cut from the Law Report Fayne asks Nettheim: "What are the odds
in this case?" Nettheim considers that the "evidence of the Islanders simply has to stack
up" but he is more concerned with the wider implication:

More to the point I think, if they win, if the High Court rules that the
pre-existing rights are capable of continuing after Australia became British this
is going to be terribly significant in terms of the relationship between Aborigi-
nal and Islander people on the one hand and Australia generally. It will mean
that Aboriginal people and Islanders will be talking in terms of rights not as a
matter of charity but as a matter of right, as a matter of justice. And I think it
would immeasurably strengthen the position of the Aboriginal and Torres
Strait Islander people in negotiating the treaty, if, in fact, we get to the point
of negotiation. I think it would be a major turning point in black and white
relationships within this country.

As the film winds to its conclusion the Reverend Passi is shown at the pulpit of the
Murray Island Anglican Church quoting a Malo saying in the Meriam Mer language
which when translated means “your hand must not take you to steal what is other
peoples”. Malo, says the Reverend Passi, is not only talking to Murray Islanders but to
the rest of the world. Graham then leaves his viewers with an image of the three Murray
Island plaintiffs and their Counsel, artfully positioned in front of a statue of the goddess
of justice, scales in hand, outside the Queensland Supreme Court, and, finally, lawyers
in legal dress disappearing down a Brisbane street.

In previewing the documentary before its first showing on the ABC, John McGregor
wrote in the *Melbourne Herald* of 23 July 1990, “When the Supreme Court does hand
down its decision let’s hope the Islanders simple wishes can be granted”. Mr Justice
Moynihan finalised his finding of fact on land use on Murray Island on 16 November
1990. He found a regulated system of land ownership to be in existence and it was left
to a Full Bench of the High Court to determine whether the system operating on
Murray Island was capable of recognition as part of the Common Law in Australia
[41]. In the historic decision of 3 June 1992 the Court found that most of Murray
Island in the Torres Strait belongs under “native title” to the Meriam people. The
Queensland Parliament and Government may have the power to extinguish title but
that power had not yet been validly exercised. *Terra nullius* was overthrown.

In June 1993 a Mabo-based claim for native title was made over Wybalenna, a
settlement covering 126 hectares on Flinders Island in eastern Bass Strait off the coast
of Tasmania [42]. The claim was lodged in the High Court on behalf of the Flinders
Island Aboriginal Association. The claim had already been the subject of the film *Black
Man’s Houses* (1992) [43] first shown by the ABC in its *True Stories* series in 1993
where it was introduced as: a “true story of White Racism, Black Survival and the
revision of history”. Philip Adams commented in his review of the film in the *Australian*
of 2 April 1993: “*Black Man’s Houses* is the latest in a distinguished succession of
documentaries that are exhuming a past that, in the wake of Mabo, has urgent
relevance to the present”.

In the wake of Mabo, the Federal Labour Government of Paul Keating, passed on
24 December 1993, the *Native Title Act*. The Act provides an opportunity for Aborig-
ines and Torres Strait Islanders throughout Australia to apply to the Native Title
Tribunal to find out whether or not native title still exists over a particular area of land
to which they may have some claim under the Act. More important for many
Aborigines is the opportunity they may have, where native title has been extinguished,
to claim compensation.

Aboriginal land rights activists have come a long way in the twenty-five years since
the tent embassy. The progression has not been linear, there have been setbacks and
disagreements within the Aboriginal community over tactics and objectives. The road
is always clearer looking back from a particular milestone such as the Mabo decision
and subsequent *Native Title Act* than at earlier points in the journey. But land rights and
related issues are now right at the forefront of the nation’s public policy agenda. The
Mabo case (and subsequent legislation) may as Nettheim suggests, strengthen the Aboriginal hand in any treaty negotiations, that may come out of the deliberations of the Council for Aboriginal Reconciliation established in 1992 to advance reconciliation between the Aboriginal and non-Aboriginal community through to the centenary of Federation in 2001 [44]. One of the main functions of this Council chaired by Pat Dodson, is to consider and report to the Minister “on whether reconciliation would be advanced by a formal document or documents of reconciliation” [45].

Aborigines and Torres Strait Islanders, then, are not always simply victims of the media. Their leaders have learnt to use it. In the years since the tent embassy, activists fired with passionate conviction and an understanding of how the media set the political agenda, must be credited with considerable success in not only positioning Aboriginal issues on the national agenda but influencing public policy outcomes. As Marcia Langton, herself one of the principal negotiators on behalf of the Aboriginal people with the Federal Government on the Native Title Act 1993, has pointed out, Aboriginal Australians have a sophisticated approach to the framing of their demands for land rights and self determination in the theatre of politics. Aboriginal activists and their supporters have exploited the potential of television and video for reaching both wide and strategically targeted audiences and arousing strong passions and emotions. They understand the importance of sound bites, news hooks and visual devices in attracting television coverage; and the need to background present demands for land rights by dramatising through “hidden histories” what they frame as white Australia’s Black past. They have acquired a strong coalition of interest groups from academia, the mainstream churches, legal, film, literary and theatrical circles, NGOs concerned with Third World development, conservationists and anti-nuclear activists and others who can back and often assist with Aboriginal political public relations campaigns in the public policy arena.

The ABC has had an Aboriginal Programs Unit since 1989: its often satirical television magazine program Blackout, commenced in June 1989, is now into its sixth series. An increasing number of documentaries about the Aboriginal past are being made. Much of the funding comes from government sources with the public relations objective of promoting wider understanding of the history of Aboriginal dispossession and dispersion which may produce over the long term, a shift in public opinion, so that non-Aboriginal Australians may become more accepting of the Federal Government’s Aboriginal policy initiatives than they were in the early 1980s [46].

Documentaries about Aboriginal history and culture have a long shelf life. They may start out on the government-funded ABC in, for example, its True Stories series which, while it may not have ratings comparable to Funniest Home Video Show on a commercial channel, will, nevertheless find an audience amongst influential opinion leaders and be promoted and reviewed in the press. The documentaries may then get a further showing at film festivals and on overseas television stations emphasising the internationalisation of Aboriginal affairs. They are then promoted in the wider Australian community and schools, and universities and abroad, sometimes accompanied by teaching notes. The NGO, Community Aid Abroad, describes its Aboriginal Film and Video Guide as “a consciousness-raising tool”:

to get these films out where they belong—in the community, enjoying vast audiences, being discussed ... changing lives. It is a consciousness-raising tool, making people aware of the profound injustices done to blacks. But most of all, it is a powerful plea for the Aboriginal cause. Winning the land rights
battle, after all, is about winning the hearts and minds of the Australian public. [47]

The exact contribution of television and video to the successful promotion of Aboriginal land rights in recent years may not be able to be calculated with precision but it can be said that the rise of the land rights star has coincided with the use of television and video to promote the cause since 1972.

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NOTES
[1] M. Langton, 'Well, I heard it on the radio and I saw it on the television ...'; An essay for the Australian Film Commission on the politics and aesthetics of filmmaking by and about Aboriginal people and things (Sydney, 1993), p. 84.
[3] Unless the context indicates otherwise Aborigine (noun) and Aboriginal (adjective) should be taken to include Torres Strait Islanders.
[6] Foley, a skilled public relations strategist and dynamic speaker, is also a talented actor. His credits include Backroads (1977, dir. Phil Noyce) 16 mm, 60 minutes. Australian Film Institute; and the television series, A Country Practice.
[7] Foley took a bus load of students from Northlands to the prestigious private school Scotch College taking the precaution to phone the headmaster who "very kindly arranged to have a barrier, put across the gate, which was the perfect image for the television cameras when they arrived", Black Anger, Gary Foley; The mellowing of Gary X, The Age, 20 March 1993.
[8] Ibid.
[9] Kevin Gilbert spent fourteen and a half years in a New South Wales prison on a murder charge. His play, The Cherry Pickers, was the first to be written by an Aborigine. His book, Because A White Man'll Never Do It (Sydney, 1973) was the first major political work by an Aborigine. After his death in April 1993 friends held a memorial service at the site of the Aboriginal Embassy outside the old Parliament House.
[10] NINGLA A-NA Hungry For Our Land (1972, dirs. Alessandro Cavadini and Carolyn Strachan) 75 minutes, 16 mm. Australian Film Institute; VHS video, National Film Library, Canberra.
[15] (Sydney Filmmakers Cooperative, dir. Mandy King) video, 24 minutes, Australian Film Institute.
[16] Australian Film Institute, My Life as I Live It; a Unique Collection of Films and Videos about Indigenous Australia (Melbourne, 1993), p. 15.
[18] (1988, dirs. Pat Fiske and Graeme Isaac) 16 mm, 90 minutes, Australian Film Institute.
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[22] Ibid., p. 52.
[23] The Northern Land Council, based in Darwin, covered the top end of the territory and the Central Land Council, based in Alice Springs, the lower half. The much smaller, off shore Tiwi Land Council has responsibility for Melville and Bathurst Islands.
[25] Marcia played the leading role in Night Cries—A Rural Tragedy (Dendy Film, 1990, dir. Tracy Moffat) 17 minutes, 16 mm and video, Ronin Films.
[27] One Mob, One Voice, One Land (1985, dir. Ralph Rigby) 58 minutes, VHS video, Aboriginal and Torres Strait Islander Commission (ATSIC) Library, Canberra.
[28] (Great Britain, Central Independent Television, 1984, dirs John Pilger and Alan Lowery) 50 minutes, VHS video, National Film Library, Canberra.
[29] Community Aid Abroad, Aboriginal Film and Video Guide (Community Aid Abroad, 1988), p. 34.
[30] The 1978 Australian of the Year; in January 1985 made a Member of the Order of Australia for services to the Aboriginal people. His brother, Mandawuy, is lead singer with the celebrated Aborigonal band, Yothu Yindi.
[33] Dr H. C. Coombs has been promoting Aboriginal issues in the public policy arena for the past three decades. Dr Coombs had a distinguished career in public administration and banking prior to becoming the Chairman of the Council of Aboriginal Affairs (1967–71).
[34] Canberra, Aboriginal Treaty Committee.
[38] A third showing by the ABC was on 3 February 1993.
[39] In 1982, for example, Nettheim and Bryan Keon-Cohen proposed that the Commonwealth Constitution be amended to include a legally binding treaty in Section 105A. Canberra Times, 29 June 1982.
[44] The Council’s secretariat is based in the powerful Department of Prime Minister and Cabinet; and its members include twelve Aboriginals, two Torres Strait Islanders and eleven non-Aborigines. The latter have been strategically chosen to include Members of the Government, Opposition and Democrats, prominent citizens associated with the churches, the Asian community, farming and mining lobbies, and the country’s most popular television personality, journalist Ray Martin.
[45] Minister Assisting the Prime Minister for Aboriginal Reconciliation, the Hon Robert Tickner, MP, Council for Aboriginal Reconciliation Bill 1991, Second Reading Speech, p. 3.
[47] Ibid., p. 1.

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