

“Mabo Decision Was . . .”: The Unsettling of the Mabo Monument through Lionel Fogarty’s Poetics of Utopic Pessimism

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Thirty years after it was decided, the *Mabo vs. Queensland (No. 2)* case has become a singularly defining landmark for the land rights movement in Australia. In 1998, Ken Gelder and Jane Jacobs declared that we live in a “post-Mabo Australia” defined by what they call “unsettlement,” a “moment of decolonization, [where] what is ‘ours’ is also potentially, or even always already, ‘theirs’” (171–72). The meaning of the concept of unsettlement has since been traced as a significant influence in Australian literature. In one recent re-reading of this intellectual trajectory, Louis Klee connected the concept of unsettlement “to one particularly generative attempt at reading” the works of Yoogum and Mununjali poet Lionel Fogarty (932), referring to Philip Mead’s chapter on Fogarty in *Networked Language* (2008). However, Fogarty is not mentioned in the early scholarship on post-Mabo Australian literature (*The Mabo Turn*, 2018), perhaps a reflection of the view that his work is located within a previous era of Aboriginal writing. While he has since been taken up in several important studies of Australian poetry in recent years, this initial omission reflects what Klee calls Fogarty’s “strange” place in Australian literature, whereby critics concede that “Fogarty is the most renowned Aboriginal poet of his generation, regarded by some as the greatest living Australian poet,” but “more often than not regarded with baffled awe or else conceived as a method of resisting the coloniser through an idiosyncratically ‘creolised’ English” (929). In this article, I return to Fogarty to foreground the view of the Mabo decision that emerges in his poetry as a reconceptualisation of the category of the political event, a framework that unsettles the very concept of a turning point in Aboriginal literature and the land rights struggle.

Fogarty has a unique claim to the land rights movement realised by Eddie Koiki Mabo who, like Fogarty, self-learned English with the assistance of a dictionary. Born eleven years before the 1967 referendum, Fogarty has written continuously about land rights through a poetic *oeuvre* spanning forty years in which he has directly participated in land rights campaigns, with documented evidence of his support for Mapoon and Wik communities in Northern Queensland (Fogarty “Rally” interview with Moore, n.p.). The breadth of Fogarty’s work makes the poet, like the Mabo case, something of a singularly defining figure. For Mudrooroo (formerly Colin Johnston) at least, Fogarty helped define the image of Aboriginal literature in an era of self-determination. Mudrooroo once noted that Fogarty’s poetry is “far from those nineteenth-century models once favoured by other Indigenous poets,” an exemplar of a “new generation of poets” who will “break down the standard critical assumptions of Europe” (*Writing from the Fringe* 80–81). To Mudrooroo, Fogarty’s creative experimentation with the English language opened new possibilities for emerging Aboriginal writers in contrast to the communicatory poetry of a prior generation epitomised by Oodgeroo Noonuccal, becoming a standard of writing at the very moment at which the Mabo case was decided.

A number of scholars, Klee included, have challenged Mudrooroo’s early framing of Fogarty as a guerrilla poet writing poems that are “indecipherable” from “the underlying structure of Aboriginality” (*Writing from the Fringe* 55). Mudrooroo’s account brings to light a curious parallel between Fogarty and Mabo in that both appeared to symbolise and initiate a radical break in Australian literature and politics in an era of unsettlement. This article troubles the concept of a generational break in Aboriginal writing and land rights campaigning. Fogarty’s poetry develops a poetics of utopic pessimism to challenge the closure that comes

with the making of monuments. Central to this project is his commitment to represent the Mabo case from several diverging perspectives: an instant in the all-times of his imagination, an interruption in the flow of colonising time, a single example in a wider pattern of internationalist struggle, an achievement in the making, and a mirage of progress.¹ These representations are littered through a number of poems that prophetically anticipate and reflect backwards on the Mabo decision, including “Standardised,” “Mabo Decision Was . . .,” “Wisdom of the Poet,” and “Will We See 1990: Land or T.V.,” and a 2018 interview with Fogarty published with *Cordite Poetry Review*. When considered together, these works renew the political demands of the Mabo case upon the present, which becomes what the poet calls a “monument deserved,” yet “unresisted” (*Minyung* 27, lines 1–4).

How to read Fogarty’s resistance to monuments? What might his words tell us in the year of a referendum? Lines like a “monument deserved” yet “unresisted” articulate Mabo as neither the realisation of an age of calls for justice nor the beginning of a toothless politics of reconciliation. These lines are striking not because they insist on resistance for resistance’s sake, but because they are uncompromising in their pursuit of an imagined reality. This is the meaning of what I call Fogarty’s utopic pessimism. His poetry denies appropriation and closure while holding fast to a vision that is no impossible utopia, but a state of unity sustained in the poet’s use of language. While Fogarty’s unflinching vision may depart from the representative intentions of the *Uluru Statement from the Heart*, future-perfect prose poems like “Memo to Us,” which imagine a “paradise” with “beautiful rivers, hills, soil” that rises “to greet the aboriginal race” (*New and Selected* 26, lines 17–18), provides a useful parallel to the *Uluru Statement*’s own refusal of closure through future tense: “When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.” If the *Uluru Statement* appeared to bring about a new horizon of self-determination, Fogarty’s pessimistic dismissal of the commemoration of the Mabo decision forces readers to come to terms with their relation to that horizon.

Fogarty’s absence in the existing literature on the Mabo turn in Australian writing has so far concealed this utopic intention. His poetry renews the meaningfulness of the state of unsettlement brought about by the Mabo decision by guarding against the appropriation of its vision. I proceed by examining this restlessness under two rubrics. The first, using an analysis of “Mabo Decision Was . . .,” considers the poet’s resistance to the fixing of the Mabo case as a single moment in settler time by contextualising Fogarty’s poetics in continuity with previous political and literary struggles. I punctuate this section with a close analysis of the poetic strategies Fogarty uses in his utopian and pessimistic visions of the Mabo decision. The following section elaborates on Fogarty’s imagining of the spatial unfolding of land rights against white fantasies of repatriation within the nation and beyond into a transnational framework that opens up in his poem, “Wisdom of the Poet.”

“Mabo decision was but a courtesy sustained”: Pessimism, Utopia, and the Political Event

Fogarty’s poetry challenges the closure of political movements into a specific event that can be commemorated in ways that allow for the evasion of a political cause or the erasure of the struggle that led to it. The Mabo case is often represented as such in that it appears to set in motion a break, a before and after. In 2008, jurist Judith Pryor suggested that the Mabo decision established a “new discursivity” by enshrining native title in Australian law and culture, making the case a “foundational text” that “aimed to alter not only the origin but also the possible futures immanent in a newly reconstituted origin” (134). A few years earlier, anthropologist Nonie Sharp, an advisor to the Murray Islanders, concluded that Mabo represented “a step in the reshaping of [Australian] identity, albeit minimal, cautious, qualified” (223). Or, as Henry Reynolds put it, Mabo marked “a turning point in Australian jurisprudence”

(231), one that had, Lisa Strelein argues, “a profound impact on the legal, social and political reality” of Indigenous / non-Indigenous relations (1). At the same time, Aboriginal authors drew upon the Mabo decision to rearticulate and refashion critiques of the doctrine of *terra nullius* that justified Australia’s settlement. Oodgeroo Noonuccal states in a 1992 speech at the Queensland University of Technology, later republished in her 1994 biography:

This legal lie of *terra nullius* has been used right up until the High Court of Australia handed down its decision on the now famous Mabo case. All previous claims at law by the Indigenous people had, up until that time, foundered on the rocks of that legal lie of *terra nullius*. (Cochrane 210)

In the foreword to the third edition of *Aboriginal Sovereignty: Justice, the Law and the Land* (1993), Wiradjuri writer Kevin Gilbert also regards “the Mabo case [as] the turning point for justice for Aboriginal People and indeed the turning point to lay the firm foundations and a vision for the whole of this country” (ix).

While Mudrooroo defined what lay after this “turning point” in Fogarty’s poetry, Fogarty himself emulates the ethos of Noonuccal’s and Gilbert’s labours in “Disguised, not attitude,” a 1983 poem republished in his 1995 collection. While “Disguised, not attitude” is directed backwards to Noonuccal’s and Gilbert’s previous works, it also speaks forward to the political ethos required of a “post-Mabo Australia”:

Praise brilliant Gilbert, mastered living blacker
cause renegade seeks in Kevin.
Writers bastard from overseas, a bare face lie
Now all books speak, land ecology never have a holiday
when nuclear murderers
but ash writers test peered interests
not over us’ fella
for again published musts are
“Long live Davis, Walker, and Gilberts
writers
we yours.”(90, lines 16–27)

The poem expresses the contradictions of the archetypal Aboriginal writer split between the “brilliant Gilbert” and the “mastered living blacker,” which evoke a figure worthy of praise, “brilliant Gilbert,” and the demands of resistance, “cause renegade . . . in Kevin.” Rather than rest on either side of this duality, Fogarty insists on the ethos of continued activity epitomised by this generation’s campaigns for land rights, as “land ecology never have holiday.”

Fogarty’s poetic repetition of this ethos points to his personal experience of political activism that predates and comes after the Mabo decision. This history contests current literary scholarship on the Mabo decision that attests to its symbolic and historical singularity against prior land rights struggles. This argument was made by Geoff Rodoreda in his first piece of scholarship on Mabo’s significance in Australian literature, *The Mabo Turn in Australian Fiction* (2018), where he states that “Mabo’s fundamental challenge to understandings of land, the nation, identity and history have triggered a new era of narrative prose writing over the last quarter century” (25). While Rodoreda has since articulated a more nuanced evocation of the Mabo turn (*Mabo’s Cultural Legacy*, with Eva Bischoff), his initial article and book distinguished the 1992 decision from related political events, such as the lead-up to the 1996 Wik ruling, the conflict presented by mining magnates, land-leasing schemes, and the rollback of native title under Prime Minister Howard’s infamous ten-point plan to amend the Act in

1998. These events speak to hard-won ground, arrested progress, belated recognition, and ultimately, the smoothing-over of the effectiveness of the Native Title Act, which ultimately failed to achieve timely and effective outcomes, to paraphrase the Australian Law Reform Commission, as due to governmental and legal delays, certain Aboriginal elders responsible for leading the claims passed away before their cases were considered.

Fogarty's poetic renewal of the meaningfulness of the political event preserves the promise of Mabo by guarding against the closure of forty years of collective and personal commitment. Born in the unceded lands of the Wakka Wakka peoples in Cherbourg Aboriginal Reserve (Barambah) in 1957, Fogarty first became involved with activism in his support for Palm Island self-determination as one of the infamous Brisbane Three. In 1974, the Bjelke-Petersen government presented false accusations of conspiracy against Walker, John Garcia, and a teenage Fogarty, all of whom faced fourteen-year maximum jail sentences for their effort to support Palm Island's proposal to build a community school (Furrah 3). After this period, together with his then partner Cheryl Buchanan, Fogarty visited Mapoon and Wik, communities fighting for land rights, communities recently removed from their homelands for the mining of bauxite. During this visit, he met elder Johnny Koowarta, who was organising a group of Traditional Owners to purchase the Archer River cattle station for the Aboriginal Land Fund Commission in 1976, only to be blocked by the Bjelke-Petersen Queensland Government. On the same visit, Fogarty engaged with Wik elder Eric Koo'iola before he travelled to Canberra to rally for his claim to land rights. Koowarta's and Koo'iola's respective struggles resulted in the landmark legal case *Wik Peoples v The State of Queensland*, as native title rights were upheld against statutory leases in 1993, a decision that paved the way for their native title claim in 1996, as Gladys Tybingoompa danced outside the High Court of Australia. Fogarty writes of this visit in the poem, "Wake up Black Population—Mapoon is Awake" in 1980: "Mapoon people need no mining / Mapoon people have their minds and bodies" (*Kargun* 9, lines 18–19). Fogarty's writing reminds us that there are many temporal dividing points in the history of Aboriginal Australian land rights. There could well be a post-Wik turn in Australian literary studies, just as there could be a post-Yirrkala Bark Petitions turn. Fogarty's personal involvement with these struggles troubles the singularity of the Mabo event. As he emphasised in a 2018 interview published with *Cordite Poetry Review*, "all this was way before Mabo" (n.p).

Fogarty's writings on land rights struggles foreground his deep-seated resistance to closure of any kind. Consider Fogarty's emulation of Noonuccal's famous poem, "We are Going," in the first line of "Kath Walker":

We are coming, even going
I was born in 1957
the year after I became a realist (*New and Selected* 81, lines 1–3)

Bob Hodge once noted that Noonuccal's original poem was composed as "a dialogue from an Aboriginal perspective to a white addressee" (73). Fogarty repeats the famous opening of "We Are Going" to create a *simulated* encounter built on the presumption of Aboriginal identity from birth, or in Fogarty's case, from the year "1957." Fogarty recuperates the dialogic mode used by Noonuccal but also addresses the consequences of its closure in settler literary criticism. The three lines work simultaneously to honour a precedent, "we are coming," yet also to qualify this vision, and "even" to work towards its reinvention. While Fogarty illustrates the problems of this initial framework of encounter, his rewriting suggests the poet's rethinking of this form of connection for future writers and readers, a point Kyle Kohinga eloquently articulates in a striking analysis of the poet's "soteriological interlocution with settler policy makers" (n.p). Joining Kohinga, I argue that Fogarty's poetry responds to the crisis of the settler

literary-critical misreading of Noonuccal's poem by activating its original formal and political promises: a coming to be of a future state of unity. In anticipating this state, Fogarty's poetry encourages the coming of future poetic modes beyond his own that respond to the demands of a future present. This mode, we glean, continues to be bound by various forms of encounter. Quoting again from Hodge, if Fogarty's achievements are "not recognised then not only will justice not be done to [Fogarty's] work, but it will be deprived of some of its power to inspire and teach Aboriginal writers of today and tomorrow" (76).

Fogarty's use of future perfect modes to resist closure allow him to explode and multiply the meaning of specific political events in his 1984 poem, "Standardised" (*New and Selected* 110, lines 1–2), which begins: "In 1492 Columbus didn't discover history / but history found them." In the opening lines, Fogarty buries the explorer in previous "history": "see repetition will find / 1606 Dutch ship, Duyfken," and connections to "Asian brothers and sisters" (lines, 20–23). Fogarty relativises the explorer's place in a larger history, folding the repetition of Columbus, Duyfken, and Cook together within a soup of misplaced intentions. Fogarty expresses this false mythos through the colonial trope of a steamboat:

Fuck steamboats bypassing our camps
gravitational spirit consequences
are piling a community invention
channeling a future, presently exist. (lines 10–13)

While the "steamboats bypassing our camps" evoke a teleological view of time, a one-way ticket through a blindness towards settler-colonial history Fogarty channels a time to come through his capacity to evoke multidirectional flows in time and memory in linguistic particles, where a "future" can "presently exist." Fogarty admonishes the steamboat passengers unable to see this reality: "My co-ercing structures, / yes or no are nonsense" (111, lines 25–26). Fogarty's uncompromising willingness to allow for duality gives his poetry its simultaneous pessimistic and utopian character. Fogarty's multi-temporal depiction of settler-colonial political events commits those able to see his vision to allow for its fruition.

Fogarty's use of pessimistic and utopian poetic modes gives him a remarkable canny foresight into future political events. In 1982, he predicted Mabo's gains and losses in the poem, "Will We See 1990: Land or T.V." (*Yoogum* 82). The poem uses a future-perfect lens to envision 1990 as "harpooned with happy futures" (line 1), amidst "tractor dealing conditions" (line 4), in short, a surreal scene of wholesale bartering for Aboriginal land that connected land rights to "incentives" and "sales," and the defacing of Uluru (as a landmark, in both senses of the world), to the Ironbark on commercial television (lines 5–8). Fogarty pessimistically describes a 1990s defined by political capitulation; its conclusion in 2001 a repetition of the double centenary of the First Fleet's arrival in 1788 (still six years away at the time of publication), which was contested by widespread Aboriginal activism, "yet 2001 still adds up to 1788" (line 30). However, even while describing the height of 90s capitulation, Fogarty draws the reader towards the horizon of the land rights struggle, which is "just like before" (line 38), an eternal present where all events are marked by their relation to a future unity.

The same framework allows Fogarty to navigate back in time to preserve past times. The poet returns to the 1967 referendum he witnessed as an eleven-year-old child in the poems, "Aphorism" (*Mogwie Idan* 62) and "1967 encouraging the right vote now?" (*Eelahroo* 27). Across these poems, he represents the referendum—the achievement of so many of his interlocutors, but especially, Noonuccal—as both a mirage of progress and an opening towards a contested achievement. Both poems were written in the wake of the Northern Territory Intervention,² and in this sense, they anticipate and build on the very shifts in the law portended by the referendum. In "1967 encouraging the right vote now?" Fogarty sees a referendum "over

prohibition of us,” which “still stands by the old / white supply user vices settled life pig’s style” (line 5), a play on formalised poetic styles of tense with the right to vote with the supply of drugs and alcohol into communities, an act of reconciliation that soothes and satisfies a settler-colonial public. This is the “settled life,” Fogarty tells us: a synthetic construction of settler-colonialism and late capitalism where a dominant culture can appropriate and internalise forms of resistance or interruption into its very constitution. Fogarty predicts the future of this teleology in 2030 to 2040, where late colonial figures like “protectors” are duplicated a century later in the economic and cultural management of Aboriginal communities. These duplications mark the limits of reconciliation, where “the change in wear was the foot on our chins” (line 19). Fogarty characterises the singular political event as a form of temporal imprisonment in ways that challenge current definitions of Mabo in Australian literature. Where Rodoreda uses the Mabo moment to delineate emerging forms of settler and Aboriginal literature, Fogarty refuses the milestone as a form of entrapment, a “change in wear.” However, Fogarty concludes this resistance to the landmark, the milestone, the event, by conducting his own poetic “referendum” on the citizen able to resist this enclosure, “who will vote for this day and nights / Citizen what won’t be silly to the truth to all in all” (line 25). Indeed, who will vote for the coming to pass of this future?

“Mabo did cause waves to turn”: Mabo as a White Fantasy of Possession / Mabo as Inter-Aboriginal Event

Fogarty also uses poetry to critique the paranoid fears of repatriation provoked by the Mabo decision, while following this line of flight and fright in solidarity with other land rights struggles overseas. This point recalls writing by Aime Chasib Furaih on Fogarty’s transnational “literary-political interaction” (10), Klee’s focus on “poetics of solidarity” (1), and my own article on Fogarty’s imaginings of pan-Aboriginal encounters (Moore 2021). The white Australian hysteria of settler dispossession is epitomised by Prime Minister John Howard’s infamous appearance on the *7.30 Report* in 1997. Howard appeared alongside a map depicting 78% of Australian land coloured brown to designate the possible land to be transferred to Aboriginal peoples, with a remaining 22% coloured white to represent the lands left to “ordinary Australians.” The map, Howard told the television audience, expressed “a simple message” that ordinary Australians could understand: the recognition of Aboriginal land rights meant a loss of settler land. Howard incited racially coded fears that associated land rights to the loss of an “Australian way of life,” bolstering a conservative national identity against what was represented as a political and racial contagion. The slowly spreading shade of brown represented a violation of carefully maintained borders and, by extension, a violation of the very order of progress, epitomised by the language of London-based mining analyst for Lehman Brothers International, Mr Rob Davies, who was reported to state that with the Mabo decision, “Australia could go back to being a Stone Age culture of 200,000 people living on witchetty grubs” (Gardiner-Garden 13).

Fogarty lampoons this hysteric response to the land rights movement in his prose poem, “Memo to Us,” from his 1995 *New and Selected Poems*. “Memo to Us” confirms the fears of Howard’s land-bereft settler with the following message, “Fortunately Australia has been given back to Aboriginals now. I’m sorry to tell you your passport is out of date, you must all leave this place” (26). Recalling the speculative, dark humour of the short film, *Babakiueria* (dir. Featherstone 1986), “Memo to Us” satirises an Australian fixation with the return of its own original sin. For example, the text unsettles the founding myth of the state of Victoria under John Batman’s falsified land treaty, “VIC is total abo control, so gubba have not got even a batman chance.” After the settlers depart, the land becomes a “paradise” with “beautiful rivers, hills, soil rose to greet the aboriginal race.” Fogarty reverses the positions of settler and

Aboriginal Australians within this ironic representation of the Edenic paradise, for example when describing an Aboriginal observer of “a painted white man dancing a dance they did at pubs” (26). The dancer presents a last vestige of settler presence, in an image that lampoons the hysteria summoned by Howard’s map regarding an expulsion from “paradise.” Fogarty’s use of this language of expulsion makes the settler appear always-already “ghostly” or spectral as they call out “from the sea”:

“I mean my race to do you abos no desecration, we are the white ones whose city roaring homes are gone, but will you please, oh aborigines, let us back to live in harmony with youse.” All the abos said: “look white race if, and dats a big IF, we let you back you must obey one rule, never be greedy. And anyhow, our new world is without the things you need, like wars. Oh miggulous, go on, find your souls, that’s what you gotta do.” At this time the poor old miggidou ghostly sound faded into infinity Of course, you whites out there are spaced pigs out into a time unknown. But us Aboriginals have the new stone age and science knowledge to bring you back to earth. (27)

Mirroring Fogarty’s play with grammar and tense in his poetry, this prose extract confirms the poet’s capacity to invert the flow of time in settler-colonial histories. Here, his speculative reiteration of the hysteria about Australia’s “stone age” reproduces and reflects back the twists and turns in the logic of native title, in which Aboriginal peoples were asked, as John Kinsella notes, to “prove ‘continuous occupation’ of the land” (379).

Fogarty looks beyond the settler existing in a state of “time unknown” to reconsider the Mabo decision’s international resonances in the 2004 poem, “Mabo Decision Was . . .” (*Minyung* 27, lines 1–8):

Mabo decision was but a courtesy sustained
Wik summit slains fair deal extracted

Fetch and locked stolen people
Fetch and catch stolen tasks

Contribution done to what pride
Protocols are heritages which provides
Monuments deserved unresisted
Commemorative shared terms

From this vantage point, the Mabo moment is *stained* (an association carried by the resonance of “sustained” and “slains”) by the Wik summit, its realisation and its capitulation; “a courtesy sustained” and a “deal extracted.” These connotations are carried through later internal rhymes, “Pride / provides.” Mabo becomes the example through which other struggles are interpreted overseas: a logic that concludes with the offering of Mabo as a “monument” of national “heritage” in the dealing of Aboriginal land. Mabo’s singular importance, Fogarty implies, inheres in the way it satisfies and soothes the conscience of an Australian public, as a defining moment in a toothless politics of reconciliation. The full rhymes carry Mabo to its ultimate costly conclusion: the reduction of what it meant to achieve land rights.

In interview, Fogarty reminded me that land rights encompass “earth rights,” a custodianship of earth, animals, sky, sea, and air, as articulated by “the elders who picked up the fight for land rights” (Fogarty and Moore). Fogarty expresses this lost understanding in his

use of the lyric and address in the poem, “Insane Go Away, Sane Come Again,” first published in *Kargun* (Lionel Fogarty 30, lines 16–23):

Animals, skies, clouds, seas
whites must go away.
You we me
Earth shouts now
Four ways
 oppressed people
Unity
 in rushing four winds

By opening white space in-between these words and phrases such as “you we me,” Fogarty creates a linguistic vacuum in which connections can emerge. This effect doubles in the rhythmic construction of the lines. Staccato “animals, skies, clouds, seas” find their repetition in “you we me,” losing a few syllables, and then the meter repeats a few lines on: “oppressed people / unity.” Phrases redouble on one another to trouble the boundaries between the speaker and his addressee. John Kinsella calls Fogarty’s play with forms of address “a communalising of the lyrical I” (156), following Stuart Cooke, who argues that Fogarty’s “I can be his own, or that of his local community, or even that of Aboriginal people across the whole continent” (241). This poetic echo underscores the poet’s poetic pursuit of “earth rights” and pan-Aboriginal solidarity, a thematic focus of the earlier collection, *Kargun*: “We belong to different styles yet like the corroboree—one story—many voices—same song” (8).

In his poem, “Supreme Risk,” a title that puns on the Supreme Court of legal precedent, Fogarty’s play with the lyric form represents that which is lost in the academic and historical discourse surrounding the Mabo decision. The poem was originally published in the journal *Republica* in 1995, before being republished in *Yerrabilela Jimbelung: Poems about Friends and Family* (2008), the sole difference being the omission of the final four sections. For the purposes of this article, I refer to the 2008 version (52, lines 1–5):

Mabo did pave away
now we have their decisions
Some carry him over waters
Mabo waves at you
Now we have an absolute right

Fogarty begins by developing the paradoxes of Mabo decisions, where “pave away” contains associations for progressive action, to “pave a way,” as well as the flattening out of progress, “pave away.” Fogarty uses this paradox to evoke the bureaucratic reproduction of a Mabo result in an era of “reconciliation” and “even basis / successive policies” (lines 8–9). He highlights the “process” of native title, an inversion of *progress*, that undermines the event’s meaningfulness. Subsequently, repetitions point to the undermining and diminishment of the right to claim native title: “sovereign ‘Sovereignness’” (lines 15–16) gestures to a form of cause-and-effect, a corrupt payoff, “Mabo paid up, now making dem payup” (line 17). Here, the poem uses language drawn from the free-market economic norms of extraction and capitalisation defended by the Howard Liberal government, predicated on rendering a *result* from the raw matter of “a refinery white court”; the poem is a refinery of the linguistic matter of the Mabo decision. This refinement of the legal decision transforms legalistic terms like “absolute rights” into a universal claim to indissoluble human rights, in order to “pave way” for a “common law,” solely occupied by “Aborigines.”

Fogarty's poetic refinery turns to the discourse of *terra nullius* and white panic (lines 21–24):

Millions think it's settled
 Millions think it's resettled
 No Governor-General's gonna hand
 over millions square kilometres of our land

The return of *terra nullius* in the post-Mabo discourse highlights that to be “settled” or “resettled” indicates the certainty of white evasion. This leads Fogarty toward his pessimistic expectation of the inevitable shortcomings of settler-Aboriginal dialogue, where the Mabo decision evokes ambiguity, as hinted at by later rhymes on “Maybe” and “Mabo,” “Mabo we followed along your tracks / Maybe we might encompass written paper” (Lines 34–35). However, rather than simply end the poem, Fogarty articulates a utopic alternative in the form of collective self-determination through the Aboriginal Provisional Government, an organisation that, quoting Chairman Bob Weatherall in 1992, “represents the reality that only we, as Aboriginal people, can forge a proper place for ourselves and those generations of Aborigines to come” (296). This serves as a form of precedence for collective action within and beyond the nation, albeit in a call yet to be answered.

Through this call, “Supreme Risk” disrupts a national framework of reconciliation to encompass a wider horizon “over waters,” where a single event can have repercussions in distant places across the oceans. Fogarty explicitly associates Mabo as one ripple across a transoceanic framework of land rights progressions, “Mabo waves at you.” Interestingly, Fogarty repeats this line in numerous poems on the subject of international land rights movements, as in “To the P. L. O. Brothers and Sisters”; in a poem dedicated to Chilean Mapuche peoples; and in “Wisdom of the Poet,” dedicated to Chilean-Australian poet Juan Garrido-Salgado, in which he repeats the phrase, “Mabo did cause waves to turn” (*Kargun* 103). Fogarty's rewriting of this line revokes the centrist meanings of the tides of history argument that was used to undermine Mabo's radical potential. He revises the line to create a utopic, inter-Indigenous meaning through oceanic and tidal formations that connect the Aboriginal land rights movement within an international context. As Klee and Furaih recognise, Fogarty's wider and longer view of time and space assumes, rather than denies, repercussions elsewhere. As he claims in “Wisdom of the Poet”: “Live on we are the earth the land / Indigenous Chilean you shall shine in our heart's spirits.” Here lies the true significance of the Mabo case for Fogarty: its capacity to create relational meanings within meaningful solidarities. By rewriting Mabo in relation to this wider and integrated framework, Fogarty creates an alternative discourse of memory that revitalises political events such as the Mabo decision according to its meanings in past, present, and future, and within a planetary ecology. Klee and Furaih both recognise that Fogarty's poetic framework unsettles the progression of national time by carrying various emergent ripples from elsewhere. This burgeoning ripple defends against closure through pessimistic resistance to academic or governmental appropriation in “a difference of gubbas interchangeable / boundaries.” But, I argue, this is also a utopian promise: in Fogarty's poetry, we are neither disappointed nor satisfied. To read his writings is to glean an alternate vision, to act in anticipation, to carry on a continued struggle, to act as the future or precursor of earlier campaigns, to extend a ripple elsewhere, and to honour Mabo as a resisted monument.

NOTES

¹ Future references to Mabo will refer to the 1992 decision in the *Mabo vs. Queensland* case (rather than Eddie Koiki Mabo), to designate the historical forces that Fogarty is writing to and against.

² The Northern Territory Intervention is the colloquial name for a range of policies introduced by the conservative federal government in August 2007. The Intervention effected a number of changes relating to specific Aboriginal communities, including restrictions on alcohol, controlled web access, changes to welfare payments, acquisitions of land, and other employment and health initiatives. It was framed as a response to the Little Children Are Sacred Report into the sexual abuse of Aboriginal children in remote communities but is controversial because of its use of draconian measures.

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