

Mabo from a researcher's perspective

By
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On 3 June 1992 the High Court of Australia brought down its decision in *Mabo v Queensland (No 2)*.¹ [2-5]. As a historian, I read with interest Henry Reynolds' essay, "Origins and implications of *Mabo*", in which he explored "some of the many ways in which jurisprudence and historiography are woven through the judgment".² In this paper I shall look briefly at some of this historiography and refer to particular source materials that informed the historical inquiry.

On 27 February 1986 the Chief Justice of the High Court, Sir Harry Gibbs, ordered that issues of fact raised in the case be remitted to the Supreme Court of Queensland for determination. [6] I carried out my research for this trial of facts. In preparation for the trial of facts, volumes of documents, selected from the considerable extant written record were tendered by both sides and then relied upon by the respective counsel in their arguments before the Court.

The Plaintiffs, five Meriam Le (Murray Islanders) [7], also drew upon history to support their case. For these Torres Strait Islanders, the oral record was, and remains, their primary source. The European written documentation is considered, at best, complementary to their oral tradition – *book pardar* (book knowledge) as it is known on Mer, or, as James Rice [7], one of the Plaintiffs explained, Meriam Le value oral exchange of information more highly than written documents as the former has to be done face to face.

Oral history and its place in historical research methodology were not unknown to an empirically trained historian. Participant-observer interviews had become a standard research tool for European scholars in their research into folk culture and folklore from the 1840s and then in the emerging disciplines of anthropology, linguistics and sociology. Such research and the interviews that informed that research played an important part in the "revival" of languages such as Catalan, Welsh, Irish and Hebrew as modern spoken languages.

By the 1980s, voices in favour of the place of oral discourse in Australian historiography were being heard through the work of historians such as Wendy Lowenstein. They argued that the oral record has validity as a primary source in its own right, especially in presenting the histories of groups which were largely invisible or badly represented in the written record. Despite the quality of their research and the soundness of their methodology, oral history tends to be seen as supplementary to the written record rather than an equal partner.³

Oral evidence – albeit in written form – is evident in many of the source materials that informed my research. I shall illustrate this opinion with three examples relied on in the trial of facts. The most obvious are the registers of births, deaths and marriages. John MacGillivray's [8] account about life on Erub (Darnley Island) in 1847 that he recorded in *Narrative of the voyage of HMS Rattlesnake* was sourced in oral information that he and other members of the *Rattlesnake*'s company [9] such as

Thomas Huxley obtained from Erubam Le (Darnley Islanders), many of whom MacGillivray identified by name.⁴ [10]

The *Reports of the Cambridge Anthropological Expedition to Torres Straits*, edited by the Expedition leader, Alfred Cort Haddon and published in six volumes between 1901 and 1935, were a major reference source.⁵ The Cambridge Expedition⁶ [11] spent “approximately seven months in the Torres Strait from April to October [1898 with]...most of the research based on the islands of Mer and Mabuiag”.⁷ The *Reports* provide fine-grained primary evidence drawn from participant observation interviews with Meriam Le in 1898. [12] Their information gave a unique time-depth to the evidence of Torres Strait Islander witnesses and to the anthropological analyses of Meriam society and their *ailan pasin* (traditional Island law and custom) that regulated the society and its system of land management and ownership that were argued during the trial of facts.⁸

The anthropological and historical research undertaken by both sides had to satisfy legal tests and be presented by lawyers in a legal proceeding. Counsel sought to establish (or disprove) the existence and nature of Meriam society and its *ailan pasin* that had continued substantially maintained from a specific point in time (1879⁹) to the present [13-17]. Paul Burke has explored the relationship between academic anthropological practice and the provision by anthropologists of expert evidence in native title cases in his study, *Law's anthropology: from ethnography to expert testimony in native title cases*.¹⁰ His analysis of Jeremy Beckett's evidence in the *Mabo* case shows that such a translation is not always a comfortable process.¹¹

I found myself involved in the *Mabo* case by accident when in late 1987 Dr Ruth Kerr (then Deputy State Archivist) and I were presented with a folder of the documents that the State intended filing with the Supreme Court. Our task was to provide the correct bibliographical citation for each, cross-index each to a similar set of Plaintiff's documents, and write a précis of the document. This task was within my experience as I had emerged relatively unscathed from the cataloguing department into Queensland history reference work in the John Oxley Library. In 1989, Ruth Kerr and I were seconded to Crown Law as research assistants. The first requirement was familiarization with a large body of historical material. While the accounts of the voyages such as those of Luís Váez de Torres¹², Matthew Flinders¹³ [18-19], Jules Dumont d'Urville¹⁴, and John MacGillivray were familiar to someone working in Queensland history, the *Reports of the Cambridge Anthropological Expedition to Torres Straits* were quite another matter. I had studied enough anthropology to know what I did not know and Alfred Haddon's six volume study soon confirmed this. While the published sources were readily accessible in library collections, the voluminous archival documents required the greatest attention. These included records at the Queensland State Archives (eg correspondence of the Police Magistrate at Somerset (1864-77) [20] and later the Government Resident on Thursday Island (1877-1914)¹⁵), at the State Records of New South Wales and at the Public Record Office (London). Non-Government records such as Haddon archive [21] at Cambridge University and those of the London Missionary Society [22] were important. Many of the record series were available only on microfilm – a medium not suited to accurate speed reading.

My comfort zone was tested when it was decided that I would prepare the genealogies of the Plaintiffs and their families. To say that I was ill-prepared for such a task is an understatement. At best I brought experience gained in genealogical reference services at the State Library. I was familiar with preparing descent charts that were used by genealogists and anthropologists to record family trees and for the documentary pitfalls lying in wait such as sometimes conflicting information contained in source materials, the frustrating absence of information and the need for meticulous cross-checking of research. I was to prove to myself that no genealogy could be either exhaustive or entirely accurate.

I was fortunate that my field of inquiry was the eastern islands of Torres Strait as they are well documented in both the European and Meriam sources. Fundamental genealogical work had been done during the Cambridge Expedition. WHR Rivers [23] produced a series of genealogies from his four months of fieldwork on the Murray Islands that were published in volume 6 of the *Reports*. His work had been followed up by later researchers. For example, Margaret Lawrie [24] had augmented and updated Rivers' published genealogies during her field work on Murray Island from 1960 to 1972.¹⁶ Rivers' work, as with everyone who would follow him into the field, was reliant on oral information possessed by the Meriam Le about their family histories.

Populating a series of descent charts with names, dates and places of births, marriages and deaths, where each entry was accompanied by bibliographical footnotes to indicate the provenance of the information, produces a rather sterile and monolinear picture. The charts could show the descent of individuals from named ancestors and were sufficiently flexible to include variant names, *ex nuptuo* births, multiple and/or successive partners. They could not, however, show, for example, the complexities of the Meriam kinship system – the foundation of social organization, and so the basic point of reckoning for Meriam society.¹⁷

Rivers encountered a problem that all researchers in the Torres Strait would need to address – the subject of “adoption”. He reported that the “chief difficulty and source of error on Murray Island was the practice of adoption and the central role that adoption played on Mer”. The term *adoption*, as understood in Torres Strait, covers a spectrum of relationships from informal caring of children, through *growap* (growing up), to more formal processes that mirrored the requirements of the *Adoption of Children Act* (Qld) (1965) and even some adoptions formalized under the Queensland Act. “Adoption” became a significant factor in the findings of fact.

While the adopted and natural descent lines can be distinguished on a descent chart, the researcher must be aware of the privacy implications before committing the information to writing. For the Meriam Le, *ailin pasin* determined the understanding, operation, and regulation of “adoption”, including rules preventing unauthorized divulgement of information. Legal prohibitions regulate any unauthorized disclosure of the identity of birth parents for adoptions formalised under the Queensland legislation.

This discussion of adoption highlights the need for the researcher to understand the reason why a particular record was created. Rivers did not compile his genealogies to provide the basis for Meriam family history, but rather to assist his study of different

aspects of vision.¹⁸ [25] He did not, despite his later regrets, record adoptions in his genealogical charts as this relationship did not assist his primary study.¹⁹ Yet his arrangement of the genealogies by villages [26] did reflect the Meriam territorial social system.²⁰

Rivers encountered different cultural conventions relating to accessing genealogical knowledge. The Meriam Le preferred to transmit their knowledge to Rivers on an individual or small family group basis [27], while on Mabuiag, the Gumulaig were comfortable in large group discussion. The consequence was that his genealogies for Mer were “far less complete than that of the islands of Mabuiag and Badu”.²¹ Margaret Lawrie experienced similar cultural differences between the eastern and western islands.²² [28]

Rivers followed a research methodology that differed very little from what his successors would adopt in the later decades. He conducted a series of participant observation interviews with a wide number of Meriam informants, he documented the source of his information, and reported that he found “surprising agreement in the different [oral] accounts.”²³ He followed up his interviews with evidence from Europeans familiar with the Murray Islands such as the Government Resident, John Douglas [29] and European residents on Mer including the London Missionary Society clergy, Rev A E Hunt and Rev E B Savage [30], Robert Bruce [31] and his brother, John (Jack) Bruce [32].

He then turned his attention to the written records. The first was the **Murray Island Register** – a record of births, deaths and marriages on the island that commenced in 1892 under instructions from the Government Resident by the LMS catechist William and then continued by the European school teachers on the island until 1928. It was then replaced by the Registrar-General’s Department records with entries from Murray Island being included with registrations from other Torres Strait Islands in a central register that was maintained on Thursday Island.²⁴ [33-4]

The Murray Island Register introduced me to another difficulty that confronts any neophyte to Torres Strait Island genealogy – the multiplicity of names and the ability of an individual to change their name at different stages of their life [34]. Rivers had encountered the same difficulty in 1898, remarking that “every inhabitant of Murray Island has several names and...that this was often a source of embarrassment in compiling the genealogies. There is a great reluctance to utter one of those names which is probably regarded by the man as his in a very special sense, and the name by which we knew all the inhabitants were either nicknames or other names of minor importance”.²⁵ [35-6] Rivers also pointed out that some names were inherited. One of these, Aiet, became an issue in the trial of facts.²⁶

In 1898 the Government Resident established the Murray Island Council and the Murray Island Court. [37-39] The **Murray Island Court Records**, extant from 1908-1970s, recorded cases heard before the local council relating to a range of island matters such as sale and inheritance of land. These records also provided evidence of people being fined for not registering their children and so became an unexpected source for genealogical research.

Church records are, for most genealogists, important sources as they can frequently contain personal data not generally included in official records. Unfortunately this series of records was not available for Mer between 1871 and 1914, as the London Missionary Society did not keep church registers. [40-1] The Papua journals and reports did provide information on names, but that meant searching the microfilm. Church records only appeared on Murray Island after the arrival of the Anglican Church in 1914. The records of St James' Church on Mer provided a valuable resource. [42]

School records [43-4] provided information for the period from 1939 to 1996²⁷, even though a school had been established on Mer in 1890.

The Cambridge Expedition members had done their preparatory work by consulting the early **published accounts** such as those of the scientific expeditions (*Investigator*, *Isabella*²⁸, the *Astrolabe* and the *Zélée*, *Rattlesnake*), accounts of missionaries and travellers, government officials. These provided an unexpected richness on names, thus extending back the family trees to the beginning of the nineteenth century, or earlier. Alfred Haddon provided a comprehensive historical overview based on these sources in volume one of the *Reports*. The same sources have remained constant companions for historical and anthropological research in the Torres Strait.

The time came to test my work through field work on Mer. Quite a daunting prospect not just because it was an amateur dabbling from a great distance when there was expert and more detailed knowledge held on the island, but also because my work was carried out in the context of contested litigation. There were ethical considerations of a State officer, who had not previously worked in Torres Strait or with Torres Strait Islanders, investigating the family history of citizens of the State of Queensland, without their permission, for the purposes of a Court case where the State was the respondent against three Meriam families. I spent three weeks on Mer and an additional two weeks on Thursday Island. I was received courteously and was offered generous assistance, even though the people knew that I was a State officer and why the information was being collected. What I took to Murray Island was a series of charts, and after discussion with many people there, family histories began to emerge. Short biographies of people were painted, explanations were given about individuals, difficult issues about multiple names and adoptions explained, and errors corrected. This, when combined with other historical resources, provided some rich materials for family histories [45-57]

Two of those significant "other historical sources" which makes research on the Murray Islands fascinating for a researcher is the the conscious decision of the Cambridge Expedition to document research through²⁹

'cutting-edge' technology which was assembled: a Newman and Guardia cinematograph with thirty reels of 75 feet of film, for still photography several cameras including a Newman and Guardia Series B, the colour photographic process developed by Ives and Joly, and for sound, two phonographs with both recording and play back facility.

Anthony Wilkin, a student of Haddon, was taken on as Expedition photographer. We are grateful that several hundred field photographs and some moving film were taken

during the visit to Torres Strait, thus providing a significant record of people and places.³⁰ Charles Myers was also a student of Haddon. He had completed his medical studies at Cambridge and was also a skilful musician. On the Expedition, Charles Myers concentrated on hearing and music.³¹ Recordings were made onto wax cylinders which were rediscovered in the 1970s in the Frazer Collection in the British Institute of Recorded Sound in London and their contents copied to more modern formats. The British National Sound Archive (part of the British Library) arranged digital remastering of the originals held in Cambridge and in 2005 the recordings were made available online through the British Library. I have chosen examples of film and wax cylinder recording here to illustrate an area of Meriam history and culture that attracted attention during the trial of facts – the Bomai-Malo cult, the major religious belief system on Mer before the arrival of the LMS in 1871. Although the missionaries tried to stop many of the major ceremonies associated with the cult and to destroy sites and objects associated with it, aspects of it continued in various forms and the ceremonies and dances were recreated for the Cambridge Expedition in 1898.³² [58-9] Its values shaped practices of land care and land tenure, and many references can be found in the transcript of evidence in the trial of facts relating to the Law of Malo (*Malo ra gelar*)³³ [60]. The Court did not always see how the passing on of knowledge of songs and dances was relevant to the claim, despite the evidence of the Meriam witnesses and the “anthropologist with historical inclinations”³⁴, Jeremy Beckett. The film is of Meriam dancers in 1898 [61] and the voice from 1898 is that of Ulai singing one of the Malo songs. [62-4]

Needless to say I brought back my sheets of graph paper with more red ink on them than black. Much work had to be done to turn my work into a Court document. Somehow a chart that was about 3 metres in length was produced and was put up on the Court wall, much to the initial disapproval of Mr Justice Moynihan.

His Honour brought down his findings on 16 November 1990 and the case returned to the High Court for the hearing of the legal issues. The High Court decision of 3 June 1992 overturned the understanding of the basis for European settlement of Australia that had found legal voice in the decision of the Judicial Committee of the Privy Council in *Cooper vs Stuart* (1889)³⁵ and solved the problem posed in *Milirrpum vs Nabalco Pty Ltd* (1971).³⁶

My research did not impact on the Court’s findings of facts. At best, it served to place people in time and place. It was a rather cumbersome, but sometimes necessary, reference point at least for the lawyers when the Meriam witnesses referred to their acquiring knowledge from their parents and grandparents and receiving their rights in their traditional lands through inheritance from their ancestors. Did I contribute anything to the inquiry? I was politely told that I had not done a bad job. People were interested in the earlier information, especially in the sad case of children who died very young. While their short lives were recorded in the written records, they were often not always remembered by later generations in the oral record. Did I make mistakes? Certainly.

Much of the evidence led by the Plaintiffs and the State established the Plaintiffs’ case of unbroken family descent from named ancestors who occupied, owned and used named and clearly defined localities on the Murray Islands long preceding the establishment of British sovereignty in 1879. The historical and anthropological

evidence established that the Meriam-Le were an organized and complex society (historically and contemporaneously) with well established laws relating to land tenure, inheritance and management (eg *Malo ra gelar*).

The Commonwealth Government's response to the High Court decision was the *Native Title Act* (Cth)(1993). The régime established under the *NTA* has seen twenty-two determinations of native title granted over the community islands in Torres Strait and several of the uninhabited islands.³⁷ One of these determinations was *Passi vs Queensland* over Dauar and Waier [65] that was handed down on Mer by the then Chief Justice of the Federal Court, Justice Michael Black, on 14 June 2001. This determination resolved some issues that had been outstanding from the *Mabo* decision. There was a further piece of outstanding business from the *Mabo* case and this was the sea component. The original claim included the traditional Meriam sea country, but this was dropped in 1989. On 23 November 2001 the Torres Strait Regional Authority lodged the first application seeking the recognition of native title rights in the sea.³⁸ [66] On 2 July 2010 Justice Paul Finn brought down a finding that accorded non-exclusive native title over part of the total sea country in the Torres Strait that would be held by a regional Torres Strait Islander society. This decision was appealed to the Full Federal Court which, in a judgment brought down on 14 March 2012, upheld many of the trial judge's findings. An application seeking special leave to appeal the case to the High Court is to be heard on 5 October. Fate decreed that I should play a similar rôle in each of these Torres Strait matters to the one I began in the *Mabo* case in 1987. [67]

I conclude with Henry Reynolds' cogent observation that:³⁹

History and law underpinned the doctrine of *terra nullius*. A radical reinterpretation of history carried through during the last 20 years provided critical underpinning for the legal resolution ushered in by *Mabo*. In turn the judgement itself is also a major contribution to Australian historiography which will influence the way history is taught and researched. In reaching to many parts of the old Empire and the United States for their precedents, the High Court judges have given a salutary reminder to historians to look beyond Australia when seeking to understand what took place here on our own continent.

¹ *Mabo v Queensland* (1992) HCA 23 (1992) 175 CLR 1 (3 June 1992)

² Henry Reynolds, Origins and implications of *Mabo: an historical perspective*, Chapter 3 in *Mabo and native title: origins and institutional implications* ed by W Sanders, CAEPR research monograph, 7 (Canberra: Centre for Aboriginal Economic Policy Research Australian National University, 1994), p. [25] (http://caepr.anu.edu.au/sites/default/files/Publications/mono/CAEPR_Mono07.pdf)

³ For a discussion of oral history that was contemporaneous with the *Mabo* case, see Louise Douglas, Alan Roberts [and] Ruth Thompson (*comps*), *Oral history: a handbook* (Sydney: Allen and Unwin, 1988)

⁴ John MacGillivray, *Narrative of the voyage of HMS Rattlesnake, commanded by the late Captain Owen Stanley...during the years 1846-1850, including discoveries and surveys in New Guinea, the Louisiade Archipelago, etc to which is added the account of Mr E B Kennedy's expedition for the exploration of the Cape York Peninsula*, 2 vols (London: T & W Boone, 1852)

⁵ *Reports of the Cambridge Anthropological Expedition to Torres Strait* [ed by Alfred Haddon], 6 vols (vol 1: General ethnography, vol 2: Physiology and psychology, vol 3: Linguistics, vol 4: Arts and crafts, vol 5: Sociology, magic and religion of the western Islanders, vol 6: Sociology, magic and

religion of the eastern Islanders) (Cambridge: Cambridge University Press, 1901-35)[hereafter cited as *Reports*]

⁶ The Expedition was sponsored by Cambridge University and was led by Alfred Cort Haddon who had visited the Torres Strait in 1888 to carry out marine science research. members of the Expedition were W H R Rivers (originally trained as a physician, but specialised in experimental psychology and physiology and lecturer on the physiology of the sense organs at Cambridge), William McDougall and Charles Myers (former students of Haddon and Rivers, were physicians), Charles Seligman (house physician and specialist in tropical diseases at St Thomas's Hospital), Sidney Ray (the Expedition's linguist, was an elementary school teacher in East London and was noted for his self-taught expertise on Oceanic languages), and Anthony Wilkin (a student of Haddon who had done archaeological work in Egypt, was taken on as the Expedition's photographer). See Anita Herle and Sandra Rose, Introduction: Cambridge and the Torres Strait in *Cambridge and the Torres Strait: centenary essays on the 1898* ed by Anita Herle and Sandra Rouse (Cambridge: Cambridge University Press, 1998), p. 1

⁷ Herle and Rose, Introduction, *Cambridge and the Torres Strait*, p. 3

⁸ Anthony Wilkin discussed Meriam land tenure in Property and inheritance, Chapter 6 in *Reports of the Cambridge Anthropological Expedition to Torres Straits*, vol 6 : Sociology, magic and religion of the eastern Islanders (Cambridge : Cambridge University Press, 1908), pp. 163-8

⁹ The assertion of British sovereignty over the eastern islands of Torres Strait in 1879 is discussed in Steve Mullins, *Torres Strait: a history of colonial occupation and culture contact, 1864-1897* (Rockhampton: Central Queensland University Press, 1992)

¹⁰ Paul Burke, *Law's anthropology : from ethnography to expert testimony in native title* (Canberra: ANU E-Press, 2011) and available at the following URL address: (http://epress.anu.edu.au/apps/bookworm/view/Law%E2%80%99s+Anthropology%3A+From+ethnography+to+expert+testimony+in+native+title/7581/Text/ch03.html#toc_marker-6)

¹¹ Burke, Beckett in Mabo, Chapter 5 of *Law's anthropology*

¹² Brett Hilder, *The voyage of Torres : the discovery of the southern coastline of New Guinea and Torres Strait by Captain Luis Vaez de Torres in 1606* (Brisbane: University of Queensland Press, 1980)

¹³ Matthew Flinders, *Voyage to Terra Australis : undertaken for the purpose of completing the discovery of that vast country and prosecuted in the years 1801, 1802 and 1803 in His Majesty's ship the Investigator*, 3 vols (London: G and W Nicol, 1814)

¹⁴ Jules-Sébastien-César Dumont d'Urville, *Two voyages to the south seas : Australia, New Zealand, Oceania 1826-1829, Straits of Magellan, Chile, Oceania, New Guinea, Australia, South East Asia, Tasmania, Antarctica, New Zealand, Torres Strait 1837-1840 in the corvettes Astrolabe 1826-1829, Astrolabe and Zelee 1837-1840*. Translated from the French and retold by Helen Rosenman (Melbourne: Melbourne University Press, 1992)

¹⁵ The Government Resident's annual reports were presented to Parliament and published in the *Votes and proceedings of the Legislative Assembly of Queensland*

¹⁶ Margaret Lawrie's major work was her *Myths and legends of the Torres Strait* (Brisbane: University of Queensland Press, 1972)

¹⁷ W H R Rivers, Kinship, *Reports*, vol 6, pp. 92-101

¹⁸ Rivers scientific work on vision can be found in *Reports*, vol 2: Physiology and psychology (Cambridge: Cambridge University Press, 1901)

¹⁹ Rivers, *Genealogies Reports*, vol 6, p. 65

²⁰ Rivers, *Genealogies Reports*, vol 6, p. 66. Rivers uses the term 'villages' located around the island (*Genealogies Reports*, vol 6, p. 66)

²¹ Rivers, *Genealogies Reports*, vol 6, p. 64

²² Lawrie, *Myths and legends*, pp. xi-xxii. Jeremy Beckett chose Badu and Mer as his studies of two contrasting Torres Strait communities. See Jeremy Beckett, The Murray Islanders, Chapter 5 in his *Torres Strait Islanders: custom and colonialism* (Cambridge: Cambridge University Press, 1987), pp. 110-46; Jeremy Beckett, The Baduans, Chapter 6 in his *Torres Strait Islanders*, pp. 147-70

²³ Rivers, *Genealogies Reports*, vol 6, p. 64

²⁴ Registers of births, deaths and marriages [at Murray Island], 1 January 1891-31 December 1928 [Queensland State Archives (QSA) 10726]

²⁵ Rivers, Personal names, *Reports*, vol 6, p. 102

²⁶ Rivers, Personal names, *Reports*, vol 6, p. 102

²⁷ Admission registers, Murray Island State School, 6 February 1939-14 October 1996 (QSA 2585)

²⁸ Phillip Parker King, *A voyage to Torres Strait : : in search of the survivors of the ship Charles Eaton...wrecked...August 1834 in...the schooner Isabella C M Lewis, Commander ...arranged from the journal and logbook by Phillip Parker King* (Sydney: George William Evans, 1837)

²⁹ Elizabeth Edwards, Performing science: still photography and the Torres Strait Expedition, Chapter 5 in *Cambridge and the Torres Strait* p. 107

³⁰ Copies of Wilkin's field photographs are held in the collection of Cambridge University Museum of Archaeology and Anthropology and copies are held at AIATSIS. See Herle and Rouse, Introduction, *Cambridge and Torres Strait*, p. 5. For a more comprehensive discussion of the photography undertaken during the Expedition see Elizabeth Edwards, Performing science: still photography and the Torres Strait Expedition, *Cambridge and Torres Strait*, pp. 106-35

³¹ Herle and Rouse, Introduction, *Cambridge and the Torres Strait*, pp. 1, 3

³² Margaret Lawrie (*Myths and legends*, p. 327) noted that Aiet Pasi was "one of the *Beizam boa* [shark kin who has risen to a high rank in the Bomai-Malo religion before the coming of members of the London Missionary Society to Mer, wrote the story of Malo in Meriam for Ray in 1898...(Reports, III, 233-39)"

³³ Grace Koch, We have the song, so we have the land: song and ceremony as proof of ownership in Aboriginal and Torres Strait Islander land claims, Forthcoming AIATSIS discussion paper (I am grateful to the author for her courtesy in providing me with a copy of the part of her paper referring to the *Mabo* case). For information on Malo's law, see Sharp, *No ordinary judgment*, Chapter 5: If you want to be a real Murray Islander you follow Malo's law, pp. 87-100. A copy of Malo's law (Malo ra gelar) in Meriam and English can be found in Lawrie, *Myth and legend*, pp. 337-8. Lawrie noted (*Myths and legends*, p. 337) that "it is known that the *Zagareb le* recited one part of "Malo ra Gelar" during the ceremony at which the sacred masks were exhibited to members of the Malo-Bomai cult (*Reports*, V, 298). It is also known that another part of "Malo ra Gelar" was recited at a time when a taboo was being placed on a garden (*Reports*, I, 147)"

³⁴ Beckett, *Torres Strait Islander*, p. x

³⁵ *William Cooper v The Honourable Alexander Stuart* from the Supreme Court of New South Wales, 3 April 1889. Judgment of the Lords of the Judicial Committee of the Privy Council in the Appeal UKPC1 3 April 1889, reproduced electronically at http://www.bailii.org/uk/cases/UKPC/1889/1889_16.html)

³⁶ *Milirrpum v Nabalco* (1971) 1 FLR141

³⁷ Information about the determinations of native title can be found at the website of the National Native Title Tribunal

³⁸ The original claim lodged in 2001 excluded that part of the Torres Strait seas surrounding the Kaurareg Archipelago that was claimed by the Kaurareg and Gudang peoples. In 2008 the Kaurareg and Gudang peoples filed separate, but overlapping, native title claims. The Federal Court then split the Application into Part A and Part B. The determination handed down by Justice Finn in July 2010 was in relation to Part A

³⁹ Reynolds, Origins and implications of *Mabo*, p. 30