

## **Traditional Law and Indigenous Resistance at Moreton Bay 1842-1855, Part II.**

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### **Abstract**

In the period 1842-1855 interracial conflict at Moreton Bay involving the Aboriginal leader, Dundalli, was characterised by colonial authorities as criminal. This paper continues the argument presented in *ANZLHS E-Journal* 2005, that these events were in fact consistent with a pattern of Indigenous law being enacted by the traditional owners of south-east Queensland.

The 2005 paper discussed the evidence surrounding events up to 1846; Part II shows how intervention by the colonial criminal justice system in December 1846 escalated the conflict but also how customary law at Moreton Bay contained mechanisms to limit and contain ongoing feuds. It will argue that Dundalli's final capture may have been based on his assumption that internal Indigenous restitution had been settled. In the end the theatre of his own execution and gallows speech provides further evidence that a parallel system of justice was operating in the region which the colonial authorities refused to acknowledge.

Just before midnight an Indigenous man crept towards the hearth of one of the 400 or so festival-goers camped at York's Hollow near Brisbane. On a sticky Brisbane summer night he worked his way closer to one sleeping man. In his hands was a noose which he intended to place over the sleeping man's head but suddenly his victim awoke and with a yell aroused the entire camp. Two constables of the Brisbane police, who had sent the man on this dubious errand, now rushed from their secluded spot on the edge of the encampment and commenced firing their carbines. The man they were seeking was shot several times in the back as he sought to flee, an innocent bystander received three bullet wounds in the legs, and another of the constables targeted the victim's dog. Between three and four hundred men, women and children including the frail and elderly and the local elder's daughter who was in the latter stages of a difficult pregnancy, fled the camp as the police came through souveniring weapons and utensils they fancied and burning the rest.

Such was the state of race relations in the northern districts of New South Wales in December 1846 that this constituted an acceptable means of attempting to procure the arrest of one of the young men, Jacky Jacky, alleged to have been responsible for the murder of the pastoralist Andrew Gregor and his female servant Mary Shannon in the October just past. Jacky Jacky's body was never found by the town police and, as the *Sydney Morning Herald* editor interposed, 'what proof was there that the black thus killed was present at the murder of Mr Gregor?'<sup>1</sup> Despite an enquiry into this abuse of the local people by the town police—an enquiry which itself generated allegations of intimidation and bribery of Indigenous assistants to the police and of Indigenous witnesses—no charges were ever laid against any of the whites involved in this attack.<sup>2</sup> While the colonial authorities prided themselves that they had done all they could in terms of legal process, the view among the custodians of the ancient law of the region was quite different.

Part I of this paper explored the role of 'talion', a central element of customary law in southeast Queensland, to show the interconnectedness of Indigenous responses to the mass poisoning at Kilcoy pastoral station in 1842 and three violent incidents which followed at Durundur, Eales and Gregor's stations in the years 1843, 1844 and 1846 respectively. While each of these events featured in British legal records of the period as criminal acts, Part I argued that Indigenous law, which was central to the operation of traditional society, provided a better explanation of what otherwise appeared as contradictory behaviour – or 'treachery' in the settler vernacular of 1842-1855. Furthermore this background is essential to understanding the role of Dundalli, a leading figure in the eyes of both colonial authorities and traditional owners, in these proceedings.

This article pursues the train of events which followed the attack by the town police on the pullen-pullen on 20 December 1846. It argues that the widely-dispersed and seemingly unrelated events of an attack on white sawyers at Pine River in 1847, the disappearance of a Moreton Bay fisherman, Charles Gray, in July 1849, the killing of two shipwreck survivors at Wide Bay in 1852 and a regional indigenous gathering in Brisbane in 1853 are coherent when understood from the 'other side of the frontier', that of an autonomous system of traditional law operating throughout the region.

The traditional owner groups had been gathering near Brisbane since late November for this 'pullen-pullen' as it was referred to by the *Sydney Morning Herald* correspondent.<sup>3</sup> The timing of this gathering is intriguing. As discussed in Part I a large gathering had already taken place in September 1846 in the weeks before the large-scale assault on Andrew Gregor's station on 18 October. Its close proximity to these events means that it is possible

that it was called to review the attack and whether sufficient restitution had now been carried out on behalf of the relatives of those who had been poisoned at Kilcoy station. As the two runaway convicts, Bracewell and Davis, had explained in the Commissioner of Crown Lands report to the colonial secretary, great meetings were ‘summoned by any tribe as occasion may require for the purpose of settling disputes which may arise among them.’<sup>4</sup> Further white aggression would overtake customary law, however, and give added impetus to this meeting.

On November 6, six weeks earlier, a party of sawyers at Doboy Creek (now known as Bulimba Creek in Brisbane’s eastern suburbs) had shot Yillbong, a Turrbal man,<sup>5</sup> whom the *Moreton Bay Courier* sneeringly referred to as ‘one of their pet chiefs’.<sup>6</sup> Known by the whites as Millbong Jemmy, he was one of the accused in the Gregor case, and so the timber cutters brought his body—‘very properly’ according to the *Sydney Morning Herald’s* correspondent—into the city to be identified so that the reward could be claimed.<sup>7</sup> Tom Petrie’s recollection, however, conveyed the savagery of the whites’ response. Yillbong was lured into a trap by the sawyers who shot him in the back of the head while being held on the ground; they then bound him and transported his body to South Brisbane where it was dragged off the dray by the legs, Yillbong taking two hours to die on the journey into the settlement; the final disrespect to his body was its later decapitation so that a cast could be made of his skull.<sup>8</sup> The Aboriginal evidence given in the Gregor case did not even name Yillbong as complicit in the murders, but perhaps even more offence was caused to the traditional owners by this mistreatment of Yillbong’s body and refusal to surrender it to his kin. Indigenous funerary rites required special preparation of the skin, skull and bones of the dead which became the sacred objects of the nearest female relatives.<sup>9</sup> Breaches of sacred mortuary practices were among the most serious offences under ancestral law.<sup>10</sup> Such savagery must have caused consternation and a demand for justice among his relatives and especially among the Megantyn Turrbal, which could only have been compounded by Jacky Jacky’s death and the wounding of others on 20 December.

This is the most likely explanation for the next group attack in the region which occurred on 10 September 1847 at what was referred to as the North Pine. The three men, sawyers James Smith and William Waller and a labourer assisting them by the name of Boller were working near the Pine River not far from Captain Griffin’s station when they came under attack by a group of Indigenous men. All were assaulted; Boller died at the camp, but Waller and Smith made it back to Brisbane where Waller died in hospital the next day.<sup>11</sup> Like the Gregor attack it appears to have been the subject of discussion and planning among the traditional owners for the North Pine Turrbal at Griffin’s station were not present at the attack but were able to tell the police who struck the blows. Participation by up to twenty adult men again crossed traditional owner group boundaries with Gubbi Gubbi, Dalla and Djindubari given prominent roles in colonial records which were otherwise weak at individual identification.

The great difficulty, particularly as white settlement increased in the district in the 1840s, is distinguishing the grounds of Indigenous talion—or ‘payback’ as whites colloquially referred to it—from other offences caused by white belligerence. Stephen Simpson, the Commissioner of Crown Lands for Moreton Bay, for example, was dismissive of this group attack on three whites. ‘As they were sawyers, a class of men but too apt to give provocation, it is difficult to say who may have been the aggressors,’ he wrote in his annual report.<sup>12</sup> James Smith, the only man to survive the attack, insisted that the sawyers had been on friendly terms with their assailants, who had visited the tree-cutters’ camp a fortnight earlier and again the previous day when the Gubbi Gubbi man, Mickaloe, had offered them fresh meat. Intriguingly, Smith also testified that on one of these visits Dundalli had also asked

him ‘where the jins were’ though this line of questioning was not pursued in any detail in the court room.

Despite the weakness of James Smith’s testimony, he does provide clues that indicate this was an assault of ritual significance. Most important was his claim that he had seen young Mickaloe in the days that followed the Gregor murders when he was working with a group of men at Bulimba.<sup>13</sup> None of the newspaper reports had named the sawyers complicit in the death of Yillbong despite them being paid a reward, and since the police magistrate apparently shared the view of the *Courier* that ‘a clearer case of justifiable homicide we never before heard’<sup>14</sup>, there are no records of any prosecutions arising from it to provide any further details. Smith’s own testimony, however, places him as a sawyer in the eastern suburbs of Brisbane at the time of the attack on Yillbong.

Not only were Smith and his sawyer companions the obvious target for retributive justice but also, as he and his companions came under attack and his offers of food or any goods that they possessed had been rebuffed, Smith claimed to have asked why they were being assailed. Dundalli was said to have stepped from behind a tree and answered in his own language. Smith, however, did not understand and so the words were never recorded.<sup>15</sup> It is likely that Dundalli was supervising the group which included the nearest male kin of Jacky Jacky and Yillbong with responsibility for avenging their deaths according to customary law.

Table 1

Name	People	Event
<b>Names of men involved in enforcement of customary law or subject to police action</b>		
Jacky Jacky	not known probably Turrbal	Killed in police attack 20 Dec 1846
Dundalli	Djindubari	Archer, Hausmann, Gregor, sawyers, Gray & Cash attacks
Yillbong Referred to by whites as Millbong Jemmy	Turrbal	Attacked by sawyers at Bulimba November 1846
Mickaloe Sometimes referred to by whites as Make-i-light	Gubbi Gubbi	Gregor, sawyers, Cash attacks
Oumulli	Dalla	Dundalli’s brother Gregor & sawyer attacks; killed in police action May 1848
Bobby Winter	Nunukul	Attack on Oumulli May 1848
Burra	Gubbi Gubbi	Mickaloe’s brother. Exacts talion on 2 shipwreck survivors early 1852
Billy Barlow	Djindubari	Revenge attack on Murki; McGrath attack
Stinkabed	Not known	Cash attack

The next intersection of traditional justice and British law was the killing of Dundalli’s brother, Oumulli, while being arrested by the town police on 28 May 1848 for his alleged role in the Gregor and Shannon murders. This attempted arrest shared many similar elements to the attack on Jacky Jacky, including the involvement of Constable Murphy of the Brisbane police and a night time visit to an Aboriginal camp. On this occasion no shots were fired and the camp retaliated in Oumulli’s defence leaving Constable Ramsay with a spear wound to

the shoulder. At the inquest the next morning the police testified that while Oumulli's ankles had been handcuffed, a rope was used around his arms and neck which strangled him as he was brought to the police office.<sup>16</sup>

Oumulli could not have been captured without the assistance of Eugene Doucette, a former convict originally from Mauritius and now living at Amity Point on Stradbroke Island<sup>17</sup> and a friend of the Nunukul, the traditional owners of the island. The involvement of some Nunukul, including the well-known Bobby Winter, is a sign that Oumulli's arrest was probably a product of traditional law as much as British colonial justice. Although the *Moreton Bay Courier* praised Doucette for his assistance to the Brisbane police, it seems he was assisting Winter and the Nunukul as much as the town police and it was in fact Doucette and Winter who applied the rope to the upper part of Oumulli's body. We may never know what infringement of ancestral law that the Nunukul had decreed Oumulli guilty of, but the means of a night attack was by no means unusual in southeast Queensland, or other parts of Australia according to Keen.<sup>18</sup> Constance Petrie includes this modus operandi specifically in her discussion of punishments arising from Aboriginal inquest practices:

Nothing could persuade them that it was not fair, and should they come across the poor unfortunate singled out his death was a certainty. Perhaps some night he would be curled up asleep in the dark, when suddenly he was pounced upon and put out of existence; or perhaps he would be innocently engaged at some occupation when a dark form, sneaking up behind him, would send a spear through his skull, or otherwise do the deed. A death always roused great desire for revenge, and the friends of the deceased would watch and plan in every way till at last their end was accomplished.<sup>19</sup>

Bobby Winter certainly does not appear to be viewed by the traditional owners of the mid-nineteenth century as some kind of lackey of the town police for his own unexpected death later became the subject of a corroboree celebrated throughout the region according to Constance Petrie.<sup>20</sup> Perhaps this customary retribution on Oumulli was linked through his brother to the on-going conflict between the Bribie Islanders and the Moreton and Stradbroke Islanders that was remarked upon by many contemporaries and which at times encompassed others in the region.<sup>21</sup>

There is no record of any retaliation by Dundalli or any other male relative of Oumulli's against the town police for his murder, but Dundalli was blamed for the talion killing of a settler the following year in July 1849. Again the Commissioner of Crown Lands recognised, indirectly, the fairness of customary law when he noted in his annual report that the death of the victim, Charles Gray, 'from the known character of the man was probably occasioned by his own misconduct'.<sup>22</sup> The only survivor of the attack, John Boddin who had been Gray's mate on board his ketch, *Aurora*, escaped overboard hiding in mangroves near Pumicestone Passage overnight and then travelling overland to the German settlement at Nundah. From there news was sent to the settlement and the killing reported on 14 July 1849. Boddin did not identify the 'seven or eight' Djindubari who boarded the vessel and assaulted Gray, but his readiness to flee apparently stemmed from Gray's assault of a Bribie Island kipper – i.e. a twelve to fifteen year old boy - the previous day. So Boddin was well aware of the likelihood of Djindubari 'payback'. The Indigenous account of the event recorded by Welsby indicates that the Bribie Islanders' grievances against Gray were simply compounded by this latest ill-use of a young boy for he had also assaulted some young Djindubari who had been assisting him with his oyster catching business some months earlier in the year.<sup>23</sup>

The 'kippa' stage of a young man's life was of great significance to the southeast Queenslanders and their ceremonies were an important means of conveying law, knowledge of the ancestors, and spiritual beliefs to the next generation and across the region for the ceremony was one of many rituals in which different traditional owner groups cooperated. Petrie devotes three chapters to describing the extensive ceremonies over many weeks that transformed the boys from twelve to fifteen years of age into the young men of each group; the Archers explained it to their family back home in Norway as akin to Christian confirmation; while John Steele has located the existence of scores of bora sites across the region.<sup>24</sup> This attack also highlights another important aspect of the function of customary law, that of the leadership role of older male kin as protectors and sponsors of the young kippers. Although none of the specific accounts of this attack actually named Dundalli, the *Moreton Bay Courier* subsequently attributed Gray's death to him and Keen's assessment of traditional authority does seem consistent with Dundalli's leadership. Keen notes that:

A number of writers on Aboriginal social relations highlight the interplay between the assertion of individual autonomy and embeddedness in networks of obligation, support and authority ... In Myers's account of Pintupi politics, people expressed relations between senior and junior people in the age hierarchy in terms of nurturance or "looking after".<sup>25</sup>

This attribute of seeking to protect his people and to minimise conflict can also be deduced from Dundalli's next public action, although the press gave a very different interpretation. In July 1851 Dundalli sent a message to the naturalist, Frederick Strange, challenging him to a fight.<sup>26</sup> Strange had spent the years 1850-51 collecting natural history specimens in southeast Queensland and had been developing his collection of marine and coastal artefacts around the islands and fringes of Moreton Bay.<sup>27</sup> The naturalist's exploration with a boat and crew near Bribie Island clearly led Dundalli to believe that he was seeking to capture him. Dundalli's challenge to hand-to-hand combat was a method of dispute resolution according to traditional law<sup>28</sup> and common in southeast Queensland.<sup>29</sup> His preparedness to confront his adversary was probably a means of defusing the tension and protecting the Bribie Islanders where the landing of a policing party would in all likelihood have provoked violent group confrontation.

Dundalli's response was not paranoid but a logical response to the news of the arrest of his ally, Mickaloe of the Gubbi Gubbi. Mickaloe had been taken into custody in June by the Native Police Detachment at Wide Bay, then in August transferred to Brisbane, where he was incarcerated in Brisbane Gaol to await trial at the November 1851 circuit court. Despite doubts about his identity, Mickaloe was sentenced to death for the attack on the sawyers at the Pine River on 14 November 1851.<sup>30</sup>

The news electrified the traditional owners whose internal tensions were reported by the press. It was fatal intelligence for two of a party of white shipwreck survivors of the *Thomas King* en route to Manilla in April 1852 when it crashed on a reef in Torres Strait. For three days a party from the wrecked ship had sailed down the eastern seaboard to the Cooloola coast on the mainland, 200 kilometres north of Brisbane. There they were intercepted and robbed, presumably as trespassers, by the Gubbi Gubbi but were otherwise unharmed. Then Mickaloe's brother, received word that the settlers were going to hang his sibling. As befitted the obligations of the nearest male kin, Burra and his friends returned to the party and killed Dr Hyslop and the sailor Smith, two of the shipwreck survivors, as talion for his brother's death.<sup>31</sup> The remaining members of the *Thomas King* fled and on 17 May 1852 the captain and one other eventually made their way into Brisbane assisted by some Gubbi Gubbi women. Rescue parties were sent out, but in June the second expedition

confirmed the payback killings and brought the sad news that the other men had died of starvation and exposure in the bush.<sup>32</sup>

The democratic and communal nature of traditional law was evident in the reports of this second rescue expedition. At Caloundra they had met with a group of traditional owners who confirmed their worst fears and explained that ‘Burra committed the murders to avenge his brother whom he believed to have been hanged.’ However, two of the Indigenous women who had just returned from accompanying the survivor Captain Walker to Brisbane had learned of Mickaloe’s reprieve and so the coastal people, the newspaper report continued,

had been quarrelling and fighting ... because news had been brought that ... Make-i-light ... was not to be hanged, but was on his way to rejoin his tribe; and some of the blacks seemed to be quarrelling with others who had taken revenge without cause.<sup>33</sup>

The rescue party having found the bodies of the rest of the crew many miles to the north, buried them and were forced to return to Brisbane with no more than a few of the personal possessions of the dead which they had obtained through bartering. On the expedition’s return one of the white members of the party emphasised the traditionalism of the coastal traditional owners, and Burra in particular, with a story of their innocence.

Mr. Munro who accompanied the party ... informs us that some of the aborigines appeared utterly ignorant of the destruction which could be effected by fire-arms and as they expressed a wish to witness the effects, a charge was fired into a sheet of bark which seemed to strike them all with much terror, particularly Burra, the alleged murderer of Dr Hyslop and Smith.<sup>34</sup>

Munro’s vignette may be a frontier cliché, but it remains a useful historical marker of pre-contact people. Clearly, Burra’s guiding values were those of ancestral law and the Bora. In a rare concession Burra’s actions were acknowledged as payback in early Queensland historiography.<sup>35</sup>

In the meantime the significance and gravity of the Indigenous system of ‘payback’ was also causing fear among the population of Brisbane. On 10 January 1852 when the *Moreton Bay Courier* announced the news that the executive council had decided to reprieve Mickaloe, among its many complaints was the fact that the Megantyn Turrbal had warned that Mickaloe would ‘kill more white fellow’ when released. It is not clear if this Turrbal information was the cause, but that same day a young Djindubari also closely associated with Dundalli, Billy Barlow, snuck up upon Murki, a Turrbal man, striking him with a tomahawk.<sup>36</sup> In mid-January it reported that there were a number of young Djindubari men about the town and by the end of the month it claimed that the Ningy Ningy and Bribie Islanders were ‘feuding’ with the Megantyn people, that a Brisbane man had been killed and a number of the Turrbal had headed to the Logan either for refuge or to convince the Logan people to join with them in the dispute.<sup>37</sup> It is tempting to see these conflicts as related to Mickaloe’s incarceration for there appears to have been widespread reconciliation upon his release on 26 May 1852, with general celebrations by the Brisbane people at their camp near Breakfast Creek.<sup>38</sup>

Participation in the payback which followed was also widespread, although the female victim may have over-estimated the numbers involved. Mrs Cash claimed that up to 200 people participated in the attack on her small station in the Pine River district.<sup>39</sup> While her husband was away, a large group which included Mickaloe descended on the slab hut and rifled the property carrying away food, clothing and valuables.<sup>40</sup> Mrs Cash fled towards the camp of a surveying party working nearby; the one man left to protect the camp was caught unawares and the massed group proceeded to destroy and remove their belongings too. A fortnight later in the same district Michael Halloran, a shepherd on McGrath’s station, was killed by a

smaller but more determined group of men which was said to include Mickaloe and Dundalli's young ally, Billy Barlow; this group appears to have dispersed soon after and Mickaloe returned to the north.<sup>41</sup>

In the former attacks, that of the Cash and surveyor harassment, senior men appear to have moderated the group behaviour. Mrs Cash testified that, although one of these senior men, Stinkabed, bore a spear and nulla nulla, he sought to reassure an unidentified child who was present: 'He told a little boy not to be "jerund" as he wouldn't numkull him – they all went away then'.<sup>42</sup> In a rare concession from the militant *Moreton Bay Courier*, Dundalli was also credited with preventing harm:

The notorious Dundalli has also figured in the late attacks, according to the accounts of his countrymen; although it is said that he for once performed an act of mercy, having saved the life of Mrs Cash, which the blacks had intended to take.<sup>43</sup>

The remainder of 1852 and most of 1853 must have been tense times for the Indigenous men involved in these actions. The court and prison records introduce a number of new personalities who were accused of involvement in either the Gregor or Cash attacks. In July Mickaloe was re-arrested and returned to Brisbane Gaol where he was incarcerated for ten months owing to the non-appearance of a witness before finally being discharged.<sup>44</sup> Stinkabed was arrested in October and sentenced to five years hard labour in November 1852.<sup>45</sup> As Stinkabed was being transferred to Sydney to serve his sentence, the Native Police were picking up two other young men supposedly for their involvement in the Gregor case despite being boys at the time. One had death recorded against him at the May 1853 assizes which was later mitigated to seven years hard labour which also took him out of the district in October 1853.<sup>46</sup> Billy Barlow too was arrested and held in Brisbane Gaol for police questioning in February 1853.<sup>47</sup>

**Table 2**  
Traditional Owners of Southeast Queensland discussed in the paper

People	Territory
Megantyn Turrbal	Present day CBD of Brisbane, Breakfast Creek, Enoggera Creek
North Pine Turrbal	Petrie, Murrumba Downs
Ningy Ningy	Coastal areas of Brisbane north of the Brisbane River to Sandgate, Redcliffe and Toorbal
Djindubari	Bribie Island
Gubbi Gubbi	Mary River Valley from Kenilworth north to Wide Bay
Dalla	D'Aigular Range north to Blackall Range
Nunukul	Stradbroke Island
Yugambeh	Logan River

Through all this police harassment of his friends and allies Dundalli had been absent from the vicinity of Brisbane, where there was still a reward posted for his supposed involvement in the Gregor murders. His decision to come into Brisbane in May 1854 which led to his arrest is thus extremely puzzling; a huge pullen-pullen held on the outskirts of Brisbane in December 1853 can perhaps unravel this mystery. This gathering for a great fight pitted the Ningy Ningy and Djindubari on one side against the Nunukul and Yugambeh from the Logan on the other. It took place near present day Stones Corner, on the flats of Norman Creek between Juliette and Cornwall Sts and in all respects seems typical of the organized fights of the region. Although the Ningy Ningy and Djindubari prevailed in the fight, the killing of a

Djindubari man halted proceedings. The Ningy Ningy and Djindubari had been dominant in the region for some years and it is possible that this death was deemed as restitution by Dundalli for many of the disputes in the region since December 1846.<sup>48</sup> Keen explains that a great fight was a means to end a feud.<sup>49</sup> Although his evidence is from the western desert, this point is affirmed by Petrie, who noted that the traditional owners of the Brisbane region, 'as always after any gathering, even a fight – they would in the end part well pleased with each other, and excellent friends.'<sup>50</sup>

Given the assistance of local Indigenous people in some of the arrests in the region, it is possible that Dundalli interpreted colonial policing as a product of his people's feuding and, once restitution had been paid by the Ningy Ningy and Djindubari, that they would be safe from further police action. Perhaps he believed that the colonial legal system could not function when not being used by his own people for their own ends. If there had been full legal restitution made by the Bribie Islanders, then he and the Djindubari would be safe from further police harassment. Ironically around about the same time the *Moreton Bay Courier* was decrying the evasion of so many Indigenous men from police action and claiming that white 'scoundrels' had to be helping them.<sup>51</sup> Each legal system operated in parallel and its leading participants assumed that their own system was in the ascendant. It as if in these early years neither the Indigenous nor European communities fully appreciated the agency of the other. Each operated according to their own mores, focused on their own authorities and assumed that the opposing culture would soon see the wisdom and superiority of their way of doing things. Rather than being foolhardy, Dundalli seemed to believe that any grievances borne against him had been settled by the death of his Djindubari compatriot at the great pullen-pullen in December. However, his moderation which had been evident in the Oumilli, Strange and Cash cases was not necessarily shared by his Indigenous protagonists and certainly was not by his settler enemies.

Tragically, the Indigenous and British legal systems clashed with savagery upon Dundalli's head in the centre of Brisbane in May 1854. His presence had allegedly been reported by the Turrbal man, Wumbungur, to the Brisbane police, who had to use two plain clothes constables, an additional white informant and a dray to procure his arrest.<sup>52</sup> He was tried in November 1854 and sentenced to death. Dundalli's disdain for the Supreme Court's operation has been covered elsewhere<sup>53</sup> and appears to be one of the factors fuelling the judge's antipathy.<sup>54</sup> There was no reprieve from the Executive Council. Even in the face of death, Dundalli called for the upholding and enforcement of traditional law. As he mounted the gallows on the morning of 5 January 1855, he delivered a speech 'with much earnestness' in his own tongue. He called to his wife, to Billy Barlow and to the Turrbal, Ningy Ningy and Djindubari, who had gathered in the scrub opposite the gaol gates, to avenge his death.<sup>55</sup>

The *Moreton Bay Courier* smugly defended his execution which was cruelly bungled and claimed that 'his death will teach the blacks ... who look up to him, that our laws may overtake the guilty',<sup>56</sup> proving that it had completely failed to understand the significance of Dundalli's speech which was the very opposite of an endorsement of British justice. Hostile sources such as J.J. Knight and the *Moreton Bay Courier* and sympathetic ones such as Constance Petrie all agree that the main message of his gallows speech was for his people to exact retribution against Wumbungur.<sup>57</sup> Many years later Archibald Meston gave us what were purported to be some of his actual words, but, since Meston's family did not arrive in the colonies for more than four years after Dundalli's execution<sup>58</sup>, Meston appears to have been relying on the recollections of the widow of the white informant and his own imagination and knowledge of Gubbi Gubbi to reconstruct part of Dundalli's speech. In

Petrie's version, Dundalli first appealed to her father for help before concentrating on his people on the hill opposite while in Meston's account Dundalli included William Baker, the white informant, in his call for vengeance.<sup>59</sup> With most of the town present it is perhaps not surprising that there is such a high level of agreement among diverse sources. Most importantly they all concur that Dundalli was not the penitent sinner morally endorsing the justice of his execution that white officials had hoped for. Instead, he used his death to re-affirm the need to adhere to the principles and rituals his people had inherited from their ancestors, the customary law of talion.

In March 1855 some eight weeks after Dundalli's execution the Reverend William Ridley and John Hausmann from the former German mission commenced a missionary tour to the stations north of Brisbane. When six or seven miles past Caboolture en route to Durundur station they came suddenly upon 'a party of full 60 blackfellows all armed'. While Ridley recorded that 'The display of their spears and clubs was formidable', they were nonetheless friendly and recognising Hausmann surrounded the two missionaries 'in a friendly manner ... asking us questions'. The armed party was on an operation to fulfil the condemned man's last instructions for when Ridley arrived at Kilcoy he found 'most of the Aborigines from here were away with the armed gathering to avenge the death of Dundalli on the Brisbane black who gave information of him.'<sup>60</sup> Dundalli's life had been an exemplar of traditional law and so too was his death. Indigenous people of Moreton Bay may have worked, socialised and travelled alongside European settlers, but they never conceded their right to their own spiritual, legal and political beliefs. As long as pullen-pullen and kipper ceremonies were being held in the region—and Steele provides evidence of a corroboree held near Obi Obi Creek as late as 1893<sup>61</sup>—traditional law was being re-enacted so that a parallel legal and moral universe was operating right under the noses of colonial authorities.

Reconstruction of traditional law in the southeast not only helps to illuminate the complex nature of Queensland's geographical and cultural frontier. Traditional law's vitality and resilience also raises many more historical and legal questions, as Simon Cooke has outlined in his work on Victoria.<sup>62</sup> If, as the evidence suggests, the traditional owners of southeast Queensland had their own system of law and government with their own means of law enforcement, then they also had political sovereignty even while the structures of colonial society were spreading across the landscape. The point at which the British had established effective sovereignty in colonial Queensland appears to be a little less clear than historians and lawyers have assumed.

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<sup>1</sup> *Brisbane Town News from the Sydney Morning Herald 1842-46*, (Brisbane: Brisbane History Group, 1989) (28 December 1846), 168.

<sup>2</sup> Inquiry into affrays with Aborigines at York's Hollow l/no. 47/2542 in CSIL no.10 Archival Estrays 81 Dixon Library; William Augustine Duncan, *Autobiography*, Mitchell Library, 67-70

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<sup>3</sup> This is the Turrbal term for a corroboree or Indigenous meeting; it was sometimes spelt bullan-bullan; the Gubbi Gubbi term was 'toor'. Special regional gatherings on Dalla lands are generally referred to as Bunya feasts or festivals.

<sup>4</sup> 'Statement of Bracewell & Davis as to the supposed administration of Poison to some Blacks by White Men' attachment in Commissioner of Crown Lands Moreton Bay to Colonial Secretary 30 May 1842 l/no. 42/4284 in Colonial Secretary Correspondence: 1842 4/2581.2 SRNSW

<sup>5</sup> Constance Petrie discusses incidents of Yillbong's life in Constance Campbell Petrie, *Tom Petrie's Reminiscences of Early Queensland* (Melbourne: Lloyd O'Neil, 1975) [facsimile of 1904] 165-170.

<sup>6</sup> *Moreton Bay Courier* [hereafter *MBC*] 14 November 1846.

<sup>7</sup> *Brisbane Town News* (30 November 1846), 164.

<sup>8</sup> Petrie, *Reminiscences*, 170.

<sup>9</sup> Petrie, *Reminiscences*, 32, 199.

<sup>10</sup> See Davis's account in Lang of the capital punishment by the Brisbane people of a runaway convict for disturbing the bones of the dead. J. D. Lang, *Cooksland in Northeastern Australia*, (London: Longman Brown Greens & Longman, 1847) 419-20.

<sup>11</sup> *MBC* 15 November 1851; *R v Moggy Moggy* in Supreme Court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1851, 9/6366 SRNSW; *Moreton Bay Free Press* 28 November 1854.

<sup>12</sup> Annual Report on the State of the Aborigines in the District of Moreton Bay for the Year ending the 31<sup>st</sup> December 1847, CCL Moreton Bay in Colonial Secretary Correspondences: 1848: CCL (1) 4/2811 SRNSW

<sup>13</sup> Smith's testimony in *R v Moggy Moggy* in Supreme Court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1851, 9/6366 SRNSW

<sup>14</sup> *MBC* 7 November 1846.

<sup>15</sup> *MBC* 15 November 1851; Smith's testimony in *R v Dundalli* (2) in Supreme Court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1854, 9/6386 SRNSW

<sup>16</sup> *MBC* 3 June 1846. Constable Murphy was mentioned in the newspaper account but not included in Captain Wickham's official report.

<sup>17</sup> T/L 46/646, Certificates of Freedom 1823-69, 4/4409

<<http://www.records.nsw.gov.au/indexes/searchform.aspx?Table=Index+to+Certificates+of+Freedom%2c+1823-69&Surname=Doucette&First=%25&Page=>> SRNSW; Petrie, *Reminiscences*, 176 names him as Isam. The newspaper used the name Lucette but other Moreton Bay and official convict records list him as Doucette.

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- <sup>18</sup> Ian Keen, *Aboriginal Economy and Society: Australia at the Threshold of Colonisation*, (South Melbourne: OUP, 2004) 252.
- <sup>19</sup> Petrie, *Reminiscences*, 32-33.
- <sup>20</sup> Petrie, *Reminiscences*, 24-25.
- <sup>21</sup> See Thomas Welsby, *Collected Works: vol.2*, (Brisbane: Jacaranda 1967) 374; P. Nique, 'The Aborigines: Diary of Messrs Nique and Hartenstein of the German Mission to the Aborigines at Moreton Bay', *Colonial Observer*, vol. 1 no.4, 1841, entry for Saturday 21 August; Petrie, *Reminiscences*, 160.
- <sup>22</sup> Stephen Simpson, Commissioner of Crown Lands, Report on State of the Aborigines of the District of Moreton for the year 1849, Archival Estrays, Add 79 Dixon Library
- <sup>23</sup> Welsby, *Collected Works*, 374-376; Petrie, *Reminiscences* 10
- <sup>24</sup> Petrie, *Reminiscences*, 37-57; J. G. Steele, *Aboriginal Pathways in Southeast Queensland and the Richmond River*, (Brisbane: University of Queensland Press, 1984) 111-13, 126-32, 167-71 & *passim*.
- <sup>25</sup> Keen, *Aboriginal Economy*, 246.
- <sup>26</sup> *MBC* 2 August 1851
- <sup>27</sup> He was later killed by traditional owners much further north along the Queensland coast in the Percy Isles east of Mackay. *MBC* 18 November 1854.
- <sup>28</sup> Keen, *Aboriginal Economy*, 266
- <sup>29</sup> For one of Petrie's examples see *Reminiscences*, 162; See also J. D. Lang, *Cooksland in Northeastern Australia*, (London: Longman Brown Greens & Longman, 1847) 410-13.
- <sup>30</sup> *MBC* 15 November 1851
- <sup>31</sup> *MBC* 19 May 1852; *MBC* 5 June 1852; J.J. Knight, *In the Early Days*, (Brisbane: Sapsford, 1898) 315. The first news report stated that the men had been killed on Fraser Island.
- <sup>32</sup> *MBC* 19 June 1852.
- <sup>33</sup> *MBC* 19 June 1852. Make-i-light was one of the settler renditions of Mickaloe's name.
- <sup>34</sup> *MBC* 19 June 1852.
- <sup>35</sup> Knight, *Early Days*, 315.
- <sup>36</sup> *MBC* 17 January 1852. The newspaper spelt his name as Murkey, Petrie as Murki. Petrie covers Murki's involvement in another revenge attack in *Reminiscences*, 224
- <sup>37</sup> *MBC* 17 January 1852; *MBC* 7 February 1852.
- <sup>38</sup> Gaol No. 407, Prison Register: 1851 PRI 1/25 QSA; *MBC* 5 June 1852

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<sup>39</sup> *MBC* 26 June 1852

<sup>40</sup> Mrs Cash's testimony on 23 June 1852 in *R v Stinkabed* in Supreme Court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 185?, 9/6378 SRNSW

<sup>41</sup> *MBC* 26 June 1852; *MBC* 3 July 1852; *R v Mickaloe* in Supreme Court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1853 9/6378 SRNSW

<sup>42</sup> The clerk's noting in the margin translates these words as 'frightened' and 'kill' respectively. *R v Stinkabed* in Supreme Court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1853, 9/6378 SRNSW

<sup>43</sup> *MBC* 3 July 1852

<sup>44</sup> *R v Mickaloe* in Supreme Court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1853 9/6378 SRNSW; Supreme Court, Criminal Jurisdiction, Judgment Book: Brisbane circuit court, 1852-1853 4/5745-5753 SRNSW

<sup>45</sup> *R v Stinkabed* in Supreme Court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1853, 9/6378 SRNSW; Judgment Book, 1852-1853 4/5745-5753 SRNSW

<sup>46</sup> *R v Mickie* in Supreme Court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1853 9/6378 SRNSW; Gaol no. 152, Prison Register: 1853 PRI 1/25 QSA

<sup>47</sup> Gaol nos. 34, 42 & 44, Prison Register: 1853 PRI 1/25 QSA

<sup>48</sup> *Moreton Bay Free Press* 27 December 1853 & 10 January 1854; *Illustrated London News* 17 June 1854; Steele *Aboriginal Pathways*, p. 133.

<sup>49</sup> Keen, *Aboriginal Economy*, 265

<sup>50</sup> Petrie, *Reminiscences*, 56. A similar point was also made about the bunya feasts on p. 23.

<sup>51</sup> *MBC* 11 September 1852

<sup>52</sup> *Daily Mail*, 21 January 1924; Petrie, *Reminiscences*, 175

<sup>53</sup> Libby Connors, 'The Theatre of Justice' in *Brisbane: The Aboriginal Presence*, (Brisbane: Brisbane History Group, 1992) 53.

<sup>54</sup> Libby Connors, 'Indigenous resistance and traditional leadership: Understanding and Interpreting Dundalli', *Journal of the Royal Historical Society of Queensland*, 19, no. 3 (August 2005): 704-705, 710

<sup>55</sup> *MBC* 6 January 1855; Petrie, *Reminiscences*, 175; Knight, *Early days*, 336-337.

<sup>56</sup> *MBC* 13 January 1855

<sup>57</sup> *MBC* 6 January 1855; Petrie, *Reminiscences*, 175; Knight, *Early days*, 337.

<sup>58</sup> S. E. Stephens, 'Meston, Archibald (1851 - 1924)', *Australian Dictionary of Biography*, Volume 5, Melbourne University Press, 1974, 243-244.

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<sup>59</sup> Meston uses the spelling ‘Dimdahli’ and ‘Woomboongoor’ in his article in the *Daily Mail*, 21 January 1924.

<sup>60</sup> Entries for 9 & 10 March 1855. Rev. William Ridley, Narrative of Labour among the Aborigines of Australia 1853, Missions Queensland MS Q165 Mitchell Library

<sup>61</sup> Steele, *Aboriginal Pathways* 213

<sup>62</sup> Simon Cooke, ‘Arguments for the survival of Aboriginal Customary Law in Victoria: A case note on *R v Peter* (1860) and *R v Jemmy* (1860)’ *Australian Journal of Legal History* 5 (1999) 201-241