

## ***Traditional law and Indigenous Resistance at Moreton Bay 1842-1855***

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On the morning of 5 January 1855 when the British settlers of Moreton Bay publicly executed the Dalla-Djindubari man, Dundalli, they made sure that every member of the Brisbane town police was on duty alongside a detachment of native police under their British officer, Lieutenant Irving. Dundalli had been kept in chains and in solitary for the seven months of his confinement in Brisbane Gaol. Clearly the British, including the judge who condemned him, Sir Roger Therry, were in awe of him. The authorities insisted that these precautions were necessary because they feared escape or rescue by his people, a large number of whom had gathered in the scrub opposite the gaol to witness the hanging. Of the ten public executions in Brisbane between 1839 and 1859, including six of Indigenous men, none had excited this much interest from both the European and Indigenous communities.<sup>1</sup>

British satisfaction over Dundalli's death is all the more puzzling when the evidence concerning his involvement in the murders for which he was condemned is examined. Dundalli was accused of the murders of Mary Shannon and her employer the pastoralist Andrew Gregor in October 1846, the sawyer William Waller in September 1847 and wounding with intent the lay missionary John Hausmann in 1845. In the first two cases the only witnesses were Mary Shannon's five year old daughter and a "half-caste" boy living with Gregor whose age was uncertain but described as about ten or eleven years old. At the inquests neither child named Dundalli as one of the murderers or even as a participant in the subsequent rifling of the station.<sup>2</sup> The boy, Ralph Barrow, was brought forward to give evidence in a number of hearings in the period 1846-1854, was sentenced to one week's imprisonment for prevaricating in 1851 because of discrepancies in his testimony<sup>3</sup> and finally in November 1854 when he was about eighteen years old avowed that the *only* person he could identify at the attack was Dundalli when he had previously named more than twenty others.<sup>4</sup>

There were similar problems in the sawyer's case. The only witness to the murder of the timber-cutter was an illiterate former convict, James Smith, who at the time of the inquest could identify only a Gubbi man whose name he was not sure of. Later, Aborigines at the station of John Griffin would state that Dundalli had been involved and from that point on Smith always claimed that Dundalli was present at the attack on him and his mates.<sup>5</sup> The missionary, Hausmann, also admitted that he could

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<sup>1</sup> *Moreton Bay Courier*, Moreton Bay, (MBC) Australia, 10 June 1854, 6 January 1855, 13 January 1855; Therry, *Reminiscences of Thirty Years Residence in New South Wales and Victoria* (1863) 287-88; Connors, "The Theatre of Justice: Race Relations and Capital Punishment at Moreton Bay 1841-59" in Fisher (ed) *Brisbane: The Aboriginal Presence 1824-1860* (1992) 53.

<sup>2</sup> *R v Dundalli* (1) (2) & (3) in Supreme Court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1854, 9/6386 (NSWA).

<sup>3</sup> *MBC*, 16 August 1851; Gaol No 356, Prison Register: 1851 PRI 1/25 (QSA).

<sup>4</sup> *MBC*, 25 November 1854.

<sup>5</sup> Inquest papers in *R v Mickie* in Supreme Court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1854, 9/6378 (NSWA)

not identify his attackers but would testify that he had heard Dundalli's voice outside his hut during the assault of nine years ago.<sup>6</sup>

Despite the weakness of this evidence, Dundalli's denial of involvement before the court, and insistence that the witnesses were mistaking him for others, Judge Therry refused to re-consider the death sentence. Yet three years earlier he had ordered the release of a Gubbi man condemned for the same murder of Gregor and Mrs Shannon, on the grounds that the judge could not be certain of the man's identity and the year before in 1853 the executive council had commuted the death sentence passed on the Indigenous man, Mickey, to seven years hard labour given the weakness of the evidence actually implicating him directly in the Gregor murders.<sup>7</sup> Therry's reputation had been built on his role as assisting prosecutor in the Myall Creek trials and at Moreton Bay he had made speeches from the bench on the rights of Aborigines before the law,<sup>8</sup> but in the case of Dundalli he would write some years later,

It has not fallen to my lot to try many of these aborigines; but one singular case of this class did come before me at Brisbane, on the Moreton Bay circuit, in which the criminal (subsequently executed) was a man of the most savage ferocity, his crime of the deepest dye, yet whose intelligence betrayed a sad and pitiful inferiority to the European mind.<sup>9</sup>

“A man of the most savage ferocity”? The rest of the passage indicates that Therry was in awe of Dundalli's great height and strength but this surely does not explain why an experienced judge would allow a man to be condemned on such flimsy evidence.

Many other references suggest that the Europeans did not view Dundalli as a common criminal. The repeated telling of stories of his involvement in attacks on Europeans had developed until Dundalli's standing in European eyes was of mythic proportions. In mid-1854, while Dundalli was being held in Brisbane Gaol awaiting trial, the *Moreton Bay Courier* reported that he had tried to break out and editorialised that he should be refused a trial and instead be dealt with by a “Special Commission” immediately.<sup>10</sup> Yet this status does not match the legal evidence.

Clearly events outside of the domain of the criminal trials were influencing all of the European participants to draw such certain conclusions about Dundalli's complicity in attacks on Europeans in the district. This article is an attempt to explain what else might have been happening by using anthropological insights into traditional authority and management of conflict. It outlines the traditional owners who became embroiled in the inter-racial conflict in the region and the integrity of traditional culture in 1846 despite the European presence in the region since 1824. The Aboriginal evidence mentioned in several criminal trials or reported by contemporary European sources at Moreton Bay in the period 1842-1846 is also revisited. It is not possible to cover in one article all of the circumstances which point to Dundalli's leading role in rituals associated with traditional law prior to his execution so this article will focus on the event which most outraged Europeans, the killing of the pastoralist Andrew Gregor and his female servant Mary Shannon.

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<sup>6</sup> *MBC*, 3 June 1854.

<sup>7</sup> Colonial Secretary to Police Magistrate 22 December 1851, Moreton Bay IL: 1851 Res/A3 (QSA); Supreme Court, Criminal Jurisdiction, Judgment Books: Brisbane Circuit Court, 1850-54 4/4745-5753 (NSWA); Gaol no 152 Prison Register: 1853 PRI 1/25 (QSA).

<sup>8</sup> See *R v Kilmeister* (2) in *Decisions of the Superior Courts of New South Wales 1788-1899* online: [http://www.law.mq.edu.au/scnsw/Cases1838-39/html/r\\_v\\_kilmeister\\_no\\_2\\_1838.htm](http://www.law.mq.edu.au/scnsw/Cases1838-39/html/r_v_kilmeister_no_2_1838.htm). Also see his comments in the trial of *R v Bambrick*, *MBC* 20 May 1850.

<sup>9</sup> Therry, *supra* note 1, 287.

<sup>10</sup> *MBC*, 10 June 1854.

The anthropologist Ian Keen explains the Indigenous concept of law in his discussion of Aboriginal governance:

The genius of ancestral law was that people of a wide region could agree to a body of legitimate law without there being legislators, and in spite of the autonomy of individuals and kin groups. ... Networks of regional cooperation underpinned the sharing of ancestral law. People of a wide region, often including people of several regional or language identities, cooperated in the performance of ceremonies that reenacted ancestral events and made ancestral beings visible and tangible.<sup>11</sup>

Only a few months after the opening of the northern districts to free settlement in 1842, the settlers were alerted to the significance of the ancient human laws which governed the rainforest scrubs and rich river flats that they were now eagerly occupying. In May 1842 Andrew Petrie and Henry Stuart Russell travelled more than 200 kilometres north along the coast and into Wide Bay in search of pastoral land along the Mary River. They had journeyed more than 300 kilometres by boat and were more than 170 kilometres north of the nearest pastoral station cut off from them by the Blackall Range to their south. Here they discovered the runaway convict James Davis whose adopted people, the Ginginbara, had traveled from the Burnett, another hundred kilometers further north to attend a huge gathering of traditional owners meeting at Tiaro to discuss their response to the poisonings of their relatives at the new sheep station of Kilcoy.<sup>12</sup>

After his rescue and return to Brisbane, the ex-convict Davis reported to the Commissioner of Crown Lands for Moreton Bay on this killing of a large number of Indigenous people, presumably by shepherds, in about January 1842 at the newly formed sheep station of Sir Evan MacKenzie. Commissioner Stephen Simpson recorded Davis's news that "nine or ten tribes suffered" the loss of members – estimates of the number of dead varied from thirty to sixty people<sup>13</sup> – and that this meeting of all the traditional owners had "vowed vengeance".<sup>14</sup> The Tiaro meeting showed just how far the kinship networks of southeast Queensland reached and the extent of the legal restitution that would be required to restore relationships in the region. It also affirms Keen's themes of the cooperation and the autonomy that characterised the practice of Indigenous law and that traditional norms were widely held. The Tiaro meeting encompassed people of Southeast Queensland living more than 400 kilometres apart. Some of those present at the Tiaro meeting had immediately wanted to kill the whites who so unexpectedly appeared among them but the convict runaways Wandji (David Bracefell, whom the party had also collected from Noosa on the way to Wide Bay) and Duramboi (James Davis) defended them and they were allowed to leave.<sup>15</sup> It seems that agreement about the appropriate talion, or "payback" as the British colonists preferred

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<sup>11</sup> Keen, *Aboriginal Economy and Society: Australia at the Threshold of Colonisation* (2004) 244.

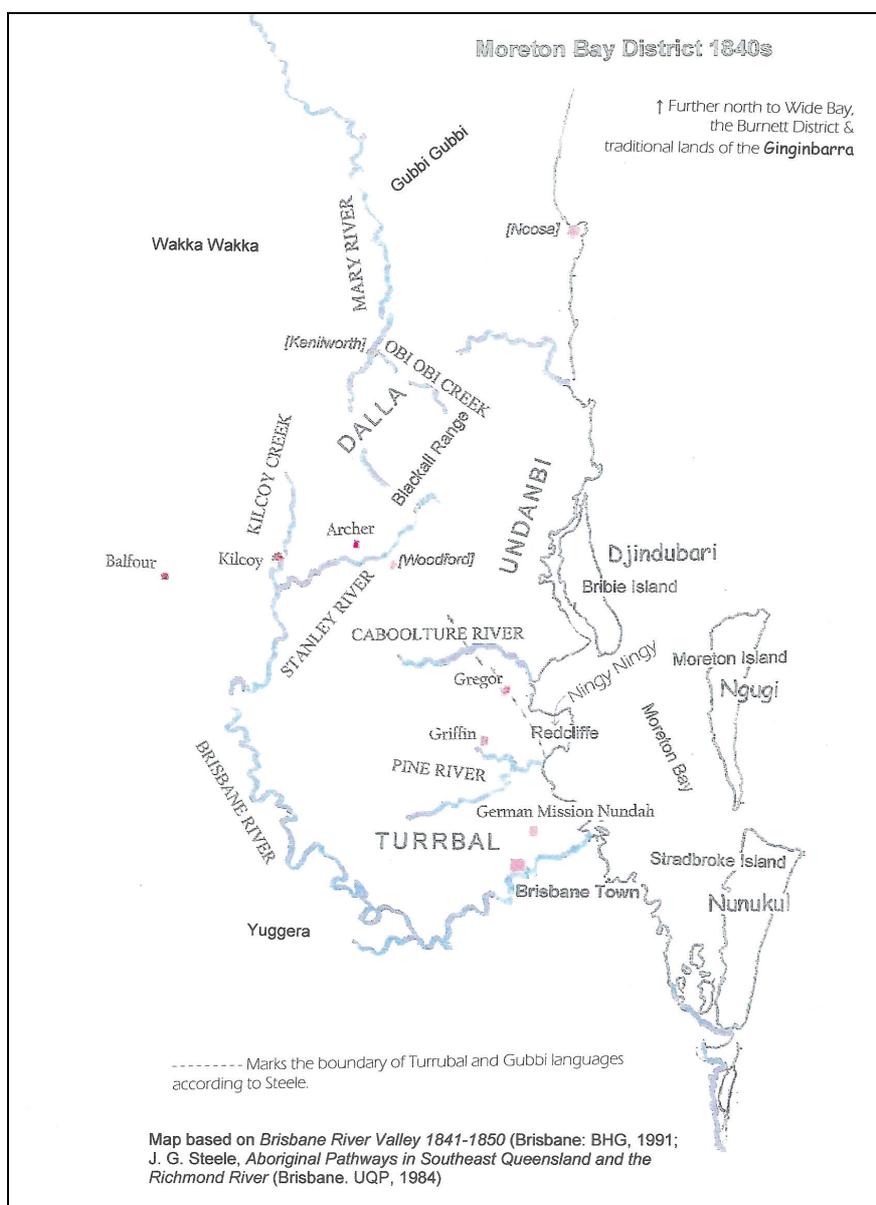
<sup>12</sup> See for example Petrie, *Tom Petrie's Reminiscences of Early Queensland* (facsimile of 1904, 1975) 258-64; Steele, *Aboriginal Pathways in Southeast Queensland and the Richmond River* (1984) 229-231.

<sup>13</sup> Commissioner Simpson gave an estimate of thirty dead, Rev. Schmidt of the German mission fifty or sixty, an estimate with which the pastoralist Henry Stuart Russell who had accompanied Petrie's party to Wide Bay agreed. See Enclosure in CCL to Colonial Secretary 30 May 1842 l/no 42/4284 in Col Sec: Correspondence: 1842 Moreton Bay, 4/2581.2 NSW, and Schmidt cited in Coote, *History of the Colony of Queensland* (1882) 46; Russell, *Genesis of Queensland* (1888) 279; Mackenzie-Smith, *Brisbane's Forgotten Founder: Sir Evan Mackenzie of Kilcoy 1816-1883* (1992) 72.

<sup>14</sup> Enclosure in CCL to Colonial Secretary 30 May 1842, 4/2581.2 NSW; Coote, *ibid* at 45-50.

<sup>15</sup> Petrie, *supra* note 12, 258-67, especially 265.

to call it, required negotiation and agreement by the affected parties. Again the practices of the southeast appear to conform to Keen’s description from other parts of Australia.



Other than this very clear record of an Indigenous gathering and the threats to Petrie’s party, European records omit any further precise references to “payback” for the Kilcoy deaths, although William Coote in his *History of the Colony of Queensland* published in 1882 made the general claim that most of the interracial killings in the Moreton Bay district could be attributed to Indigenous payback for the Kilcoy poisonings.<sup>16</sup> The Reverend John Dunmore Lang was also unequivocal in his description of traditional governance at Moreton Bay.

Their form of government is rather democratical than patriarchal or kingly. Their internal polity, however, is far from being arbitrary, being very much regulated by certain traditionary laws and institutions, of which the obligation is imperative upon all, and the breach of which is uniformly punished with death.<sup>17</sup>

<sup>16</sup> Coote, *supra* note 13, 50.

<sup>17</sup> Lang, *Cooksland in North-Eastern Australia* (1847) 393-94.

The period 1842 to 1846 marks the moment of first European contact for most of the northern peoples so the lack of recognition or acknowledgment of traditional practices as the essential factor determining Indigenous responses to Europeans is a serious weakness of the existing historiography.

The penal establishment at Moreton Bay which operated from 1824 to 1839 was a closed settlement where no Europeans were allowed to enter without the permission of the government. Its activities were confined to a stock station at Limestone (Ipswich), crop-planting at Kangaroo Point, a farm down river at Eagle Farm, a pilot station at Amity on Stradbroke Island to lead vessels into the Bay and the main government, military and convict buildings at Brisbane. Military clashes on Stradbroke and Moreton Islands in the 1830s were brutal in their effects on the Nunukul so that they and the Megantyn of the Turrbal, whose traditional place was the bend on the river where the town of Brisbane was established, were the two groups of owners to bear the brunt of the British cultural onslaught over this fifteen year period.<sup>18</sup> The only development outside these areas that was authorized during the penal period was the German mission which was permitted to set up about six miles north of the main settlement at Nundah, again on Turrbal lands. Although the settlement was wound down in 1839, the district remained closed but continued to operate with a reduced convict and official presence. In 1840-41 when pastoralist-adventurers moved north into regions that would eventually become southeast Queensland, they were required to remain outside a sixty-mile radius of the penal station until the official opening of the region to free settlement in 1842.

A high level of intercommunication and travel among the southeast peoples, as well as curiosity and trade, probably brought a large number of people into passing contact with these British outposts. No doubt British diseases raised mortality and had a negative effect generally on the health of the traditional owners. However the anthropological evidence indicates that the traditional economy was a strong one<sup>19</sup> and passing mentions in European records of movements of Indigenous people and traditional gatherings indicate that the ceremonial and cultural life of the region remained vibrant into the 1860s.<sup>20</sup>

The first European stations to the north of Brisbane were founded in the pastoral rush of 1840-41. Evan Mackenzie's Kilcoy run was on the western boundary of Dalla lands, John Balfour's Colinton impinged on Wakka Wakka territories, Frederick and Francis Bigge's Mount Brisbane station was Yaggera country and the Archer brothers' Durundur run leased part of Dalla lands, all of which were claimed within a few weeks of one another in June to August 1841.<sup>21</sup> However these stations were isolated and remote from the settlement until after the official opening of the region when settlers took up lands in the Pine River Valley between Durundur and the German community at Nundah.

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<sup>18</sup> "The Mogwi take Mian-jin" in Fisher (ed) *Brisbane: The Aboriginal Presence* (1992) 19-21.

<sup>19</sup> Morwood, 'The Archaeology of Art: Excavations at Maidenwell and Gatton Shelters, S.E. Queensland,' (1986) 3 *Queensland Archaeological Research* 88-132.

<sup>20</sup> See Steele's reference to large Bunya gatherings in the 1860s in Steele, *supra* note 12, 275.

<sup>21</sup> Mackenzie-Smith, *supra* note 12, 54.

**Table 1 Traditional Owners of Greater Brisbane and to the North**

Turrbal	Undanbi	Dalla	Gubbi Gubbi	Djindub ari	Yagger a
From Brisbane R north to the Pine River Town of Brisbane was on Megantyn land <i>Referred to as the Duke of York's people by the Europeans in the 1840s &amp; 1850s</i>	Redcliffe <i>Referred to as the Ningy Ningy or 'Saltwaters' by the Europeans in the 1840s &amp; 1850s</i> North of the Pine River Sunshine Coast coastal plain	D'Aguilar Range [Brisbane Forest Park] Mountainous areas north of the Pine River Conondales Blackall Range north as far as Kenilworth <i>referred to as the Bunyas in the 1830-40s</i>	Mary River Valley probably from around present day Kenilworth north to Wide Bay & Maryborough	Bribie Island <i>recognized as a distinct people by Europeans in the 1840s &amp; 1850s but also referred to as 'Saltwaters'</i>	South of the Brisbane River West to Lockyer and Fassifern districts
Based on Steele, supra note 17; Tindale, <i>Aboriginal Tribes of Australia</i> (1974); Ford & Blake, <i>Indigenous Peoples in Southeast Queensland</i> (1998) There are many spelling variants of traditional names; this article generally uses those given by the Foundation for Aboriginal and Islander Research Action.					

So Dundalli, who was already an adult when he met the German missionaries at Toorbul in August 1841,<sup>22</sup> grew up in the heart of the traditional ceremonial and social life of southeast Queensland. According to the missionaries he was a Dalla man and since the Dalla hosted Bunya festivals at their site at Baroon in the Blackall Ranges they played a central role in the political-economy of the region.<sup>23</sup> The Bunya festivals were an opportunity to gather news, learn new songs and dances, to organise initiation ceremonies and betrothals, settle disputes and enjoy competitive sports and fights. Growing up in this environment thus placed Dundalli in an ideal setting to learn not just traditional knowledge but also the diplomatic and social skills required to manage large numbers of people.<sup>24</sup>

These great meetings thus facilitated not only an extensive kinship network across the region but also a shared set of religious beliefs which determined social relations and obligations. Although the great festivals were triennial, kinship relationships were further reinforced at Moreton Bay by the bora ceremonies, male initiation rituals in which traditional lore was revealed to young men from several different owner groups providing them with the knowledge and testing to enable them to become warriors. The bora ceremonies of the Moreton Bay district were frequently commented upon by the British settlers and Steele has located an extraordinary number of bora ritual sites across southeast Queensland and often also recorded their shared

<sup>22</sup> *Colonial Observer*, 28 October 1841.

<sup>23</sup> Steele, supra note 12, 212.

<sup>24</sup> See Lang on the rights and obligations of the hosts of traditional gatherings: Lang, supra note 17, 392.

use.<sup>25</sup> These traditional practices in early Queensland conform closely with the continental pattern. According to Keen's case studies of ancestral law they were part of the grounding in the moral precepts and laws which governed traditional life:

Everywhere ceremonies in which people of intersecting regions cooperated expressed bodies of doctrines shared by people of these regions, albeit with local variants and disagreements. Especially important among these were male initiation rites and everyday revelatory ceremonies, which brought together people of a broad region.<sup>26</sup>

The first attacks on European pastoralist stations took place in September 1841 within weeks of their founding. They mainly appear to have consisted of attacks on sheep by either the Yaggera or Dalla and are consistent with the minor legal punishments ascribed elsewhere for encroachment on one's country.<sup>27</sup> The large numbers who participated in these raids on stock - Balfour reported upwards of 3500 people - intimidated the convict stockmen and seem to have been the precursor to the horrific poisonings at Kilcoy in early 1842.

We know that the Tiaro meeting to discuss the response to the poisonings was in May. The first violent acts to follow east of the Brisbane Ranges<sup>28</sup> do not appear to commence until March 1843 when Cambayo, a Djindubari man, in company with Dundalli, speared a shepherd on Durundur station.<sup>29</sup> The killing of four shepherds followed this at Eales station on the Mary River in Gubbi Gubbi country in July. Gubbi Gubbi attacks on men and stock eventually forced Eales to surrender his run by August 1844.<sup>30</sup>

Despite the delay, it is quite possible that these attacks were legal punishments for the Kilcoy poisonings. Just as in western legal practice, traditional inquest practices could take many months to determine the guilty party. Keen describes the legal process that operated in the southwest of Australia which obliged relatives to delay talion for a number of months although not indefinitely. The Wiil-Monong people believed that the "dead men's spirits stole spears from their relatives until their deaths were avenged."<sup>31</sup> Similarly, at Moreton Bay, Lang described how a ritual inquiry would be held into an unexplained death among the young or those in "the vigour of ...manhood" which was presumed to have come about through unfair means. The skin of the dead would be carried on two spears around a gathering by a "soothsayer", "exorcist" or "priest" and asked who was responsible. The answer was audible only to the "turrwan"<sup>32</sup> who proceeded until someone was found. "The latter is thenceforth marked out for death, and though nothing should be done to him at the time, he is sure to be eventually surprised and killed..."<sup>33</sup> Constance Petrie related a variation of this ritual among the

<sup>25</sup> Steele, *supra* note 12, 111-13, 126-32, 137-38, 165, 167-71, 174-75, 177-78 & *passim*.

<sup>26</sup> Keen, *supra* note 11, 267.

<sup>27</sup> See discussion of Wiil-Minong, *ibid* at 257.

<sup>28</sup> Although there was a number of inter-racial hostilities in the Brisbane Valley and on the Darling Downs to the west, this article focuses on events involving the Dalla and coastal peoples to try to reconstruct events involving Dundalli and leading up to the attack on Gregor.

<sup>29</sup> Archer, *Recollections of a Rambling Life* (1988) 75-80; Enclosures in Police Magistrate to Colonial Secretary 19 October 1844, l/no 44/7954 in Col Sec: Correspondence: 1844 Moreton Bay 4/2656.2 NSW

<sup>30</sup> *Brisbane Town News From the Sydney Morning Herald 1842-46* (1989) (25 July 1843; 9 August 1844) 22-23; 60.

<sup>31</sup> Keen, *supra* note 11, 257.

<sup>32</sup> This is the Turrbal word used by Tom Petrie for 'a great man' who acted as both priest and doctor. Petrie, *supra* note 12, 29-30.

<sup>33</sup> Lang, *supra* note 17, 428.

Turrbal whose female elder, after the lengthy process of carrying, drying and separating the body, would sit in the middle of a gathering and strike the bones of the dead, calling out the name of the guilty party at the same time. “Father has been present on these occasions, and the blacks would always draw his attention to the unquestionableness of the conclusion arrived at. Nothing could persuade them that it was not fair, and should they come across the poor unfortunate singled out his death was a certainty.”<sup>34</sup>

Having determined who was responsible is only part of the judicial process. Responsibility for carrying out the punishment in traditional Australia fell to the kin of the dead. In the absence of an institutionalized legal system, the anthropological literature emphasizes the responsibility of individuals and their kin to enforce interpretations and penalties for breaches of ancestral law. “When a law was breached it was up to the aggrieved party to gain the support of kin and take redressive action; no specialized political or legal bodies existed to which they could appeal.”<sup>35</sup> At Moreton Bay, Lang claimed this was the duty of a brother<sup>36</sup> but Keen emphasizes that alliances in disputes followed kin lines and could reflect marriage networks that cross-cut regional and local identity.<sup>37</sup> Thus, if the Tiaro meeting had decided guilt for the Kilcoy deaths – and we know that there were divisions over this at the meeting – the relatives of the thirty to sixty dead still needed to gather the support of their kin for the enforcement of the appropriate penalties.

It is tempting to see Dundalli as someone overseeing the enforcement of these penalties. At about the time of the Cambayo attack Dundalli moved from the Blackall Ranges to Bribie Island and thereafter the reputation of the Djindubari, the traditional owners of the island, changed from being peaceable and hospitable to hostile to Europeans and jealous guardians of their resources.<sup>38</sup> The missionaries reported that there was traditional enmity between the “saltwaters” and “mountain blacks” meaning the Undanbi and Dalla, the *Moreton Bay Courier* often commented on the Turrbals’ fear of the Ningy Ningy, while Welsby’s account makes clear the traditional opposition between the Ngugi and Nunukul of Moreton and Stradbroke Islands on one side and the Djindubari on the other. Therefore securing regional agreement to the enforcement of appropriate penalties for the Kilcoy poisonings would not have been achieved easily.

In March 1845, however, Dundalli appears to have won the support of the Ningy Ningy for the revenge attack on John Hausmann at Redcliffe. This incident makes no sense other than as ritual payback, for the Ningy Ningy were on friendly terms with Hausmann and the missionaries. Hausmann testified that he had employed between fifty and sixty Ningy Ningy during the day and felt no particular personal danger despite remaining at the hut on his own that evening. At sundown however Trimmerri called to him and when he approached struck him twice across the head; Hausmann managed to retreat to his hut taking a spear in the back in the process and then coming under siege from a group of eight Ningy Ningy who proceeded to dismantle the slabs and door in order to steal blankets and flour before setting the hut on fire.<sup>39</sup> Attacking someone who had been deemed guilty of murder, even if he was a friend, was obligatory under traditional law. In his discussion of governance among the Kurnai of Gippsland, Keen

<sup>34</sup> Petrie, *supra* note 12, 31-32.

<sup>35</sup> Keen, *supra* note 11, 245.

<sup>36</sup> Lang, *supra* note 17, 398-99.

<sup>37</sup> Keen, *supra* note 11, 249.

<sup>38</sup> See the report in *MBC* 17 June 1848 and contrast with Uniacke’s report of 1823 quoted at length in Lang, *supra* note 17, 415.

<sup>39</sup> *R v Dundalli* (1) Supreme court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1854, 9/6386 NSW; *Brisbane Town News*, Brisbane, Australia (*BTN*) 21 March 1845, 83-84. Hausmann survived by hiding in a gully in the bush.

emphasises the importance of an extensive network of relatives for support and security but then adds that ‘people also lived with their enemies.’<sup>40</sup> Such an idea could not have been more foreign to the British settlers who interpreted the participation of Indigenous people, whom they had befriended and worked with, in attacks on Europeans as acts of the greatest betrayal.

It is possible that the Durundur, Eales and Hausmann attacks were talion for the Kilcoy deaths of relatives of the Djindubari, Gubbi Gubbi and Ningy Ningy respectively, but since Davis reported that “nine or ten tribes had suffered”, significant legal restitution remained outstanding. A bunya festival would have provided the ideal occasion to discuss whether sufficient retribution had been inflicted on the white community or whether there were still outstanding obligations to the dead. A large meeting of “various powerful tribes from a distance of one hundred miles” had taken place on the Logan River south of Brisbane in November 1844 just prior to another attack on a shepherd at Kilcoy<sup>41</sup> and in March 1845 the *Sydney Morning Herald* had reported that “upwards of 200 blacks” from Wide Bay and the “Sea Coast” had assembled near Brisbane for a “great pullen-pullen” just a week or so before the Redcliffe attack on Hausmann.<sup>42</sup> Thomas Dowse, the Moreton Bay correspondent for the paper was in no doubt of the function of these meetings, “a grand coroboree ... is pretty well known is now converted into a meeting or council for devising new plans to carry on their depredations upon the whites.”<sup>43</sup> The next festival, according to Thomas Welsby, was in September-October 1846. Significantly, as the traditional owners made their way home,<sup>44</sup> a mass attack was carried out on the station of Andrew Gregor and Gregor and his female servant were killed. Mary Shannon’s husband, working at a waterhole 200 yards away at the time, escaped a spearing and the Shannons’ three children and the boy Ralph Barrow were unmolested.

There are a number of unusual aspects of the case. The first is that a large number of people was involved. Barrow and Thomas Shannon both testified that as well as the four Indigenous men employed by Gregor that Sunday morning that there were about twenty others about the station buildings. Shannon turned towards the hut when he heard his daughter scream and reportedly saw “a great number of Blacks” coming from the creek towards the premises.<sup>45</sup> At a subsequent hearing Ralph Barrow and Margaret Shannon named up to twenty-eight individuals including one woman whom they recognized participating in the raid with Margaret distinguishing between the Ningy Ningy whom she knew, “saltwaters” and others whom she did not know.<sup>46</sup> In the years that followed a number of prosecutions of individuals allegedly involved in the attack who would have been young boys at the time were brought before the Moreton Bay courts<sup>47</sup> triggering a letter of protest from Frederick Walker, commandant of the Native Police Force. Walker claimed that “the murderer made every boy, woman and

<sup>40</sup> Keen, *supra* note 11, 252.

<sup>41</sup> *BTN*, 8 and 26 November 1844, 70-71, 73. The *SMH* contains the only report of this assault and its reports were not always accurate. Tom Archer does not record this incident in his memoirs commenting only on the stock losses which Durundur endured in the early 1840s.

<sup>42</sup> *BTN*, 13 and 21 March 1845, 83-84.

<sup>43</sup> *BTN*, 8 November 1844, 71.

<sup>44</sup> Welsby, *Collected Works*, Vol 2 (1967) 382.

<sup>45</sup> Inquest papers included in *R v Mickie* in Supreme Court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1853, 9/6378 NSW.

<sup>46</sup> *R v Constable* in Supreme Court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1846, 9/6357 NSW.

<sup>47</sup> See *R v Mickaloe* in Supreme court, Criminal Jurisdiction: Clerk of the Peace, Brisbane 1853, 9/6378 NSW; Judgment Books: Brisbane Circuit Court, 1852-53 4/4745-5753 NSW; Gaol no. 34, 42 & 44 Prison Register: 1853 PRI 1/25 (QSA).

child carry away the property” and argued that there should be a general amnesty for all those involved.<sup>48</sup> Walker’s perspective, that not only large numbers of people but men, women and children of all ages participated, provides an insight into the likely communal meaning of this attack.

The raid certainly comprised participants from across traditional owner groups. Although it has not been possible to identify all the individuals the children named, Gubbi Gubbi, Dalla, Djindubari and Turrbal can be distinguished, including three sets of brothers, suggesting that young men were given leading parts in this ritual. The girl’s reference to “saltwaters” indicates that Undanbi were also likely to have been present. Again too there is the phenomenon of individuals known to whites and on good terms with them participating in the assault. Brandy Brandy, described by Lang as “the chief of the district”, appears to have frequented Captain Griffin’s station a little further south on the Pine River, yet was named as involved.<sup>49</sup> So too were Constable and Dick Ben who were both reported by Shannon to have been employed by Gregor the fortnight prior to the attack and to have been well-treated. Another, Jacky had been sent by the Rev John Gregor to deliver a letter to his brother at the station; Nicker was well-known at Durundur and employed by the Archers, including in the attempted capture of Cambayo and Dundalli in 1843.<sup>50</sup> Clearly the attack was not simply a guerilla raid but appears to have cut across Indigenous-European social relations and across traditional owner groups in order to fulfill kinship obligations. This did not necessarily mean a lack of affection or feeling for the victims by the main players. One of the German missionaries related the incident of a fight in April 1842 when the elder Ubie Ubie repaid a young man, Burumballi, for an injury the previous day. Ubie Ubie was victorious but it did not stop him bewailing the death of his young protagonist.<sup>51</sup>

In Gregor’s case his “guilt” may have simply been an accident of geography. His station lay on the boundary which John Steele argues marked the southern limit of the Kabi language and was perhaps therefore an ideal location to settle the debt of a number of family groups from across the region.<sup>52</sup> Final legal restitution for Dalla, Ningy Ningy, Yaggera, Turrbal and Djindubari kinship was perhaps represented in this one case.

This aspect is further reinforced by the information provided to the police by Paddy, the “chief” at Durundur station. Despite being back at his camp on the Durundur run, Paddy was emphatic as to which of the four young men had done the killing and that Dundalli “stop in scrub”.<sup>53</sup> While many had a part to play in this ritual, it seemed that Paddy was clear about whose duty it was to play the main roles in this drama.

The evidence from Walker implied that there were far more participants than the twenty-eight who the two children were able to name. Such a cast no doubt required co-ordination and direction. European witnesses were unable to identify Dundalli explicitly as a primary offender in either the Durundur, Hausmann or Gregor assaults yet all noted his presence and ascribed him authority in the events. In Hausmann’s words, “I heard Dundalli outside talking ... The prisoner Dundalli was chief talker there he seemed to the principal one there”; while his presence was also specifically affirmed by Paddy at Gregor’s station. Police magistrate Wickham described Dundalli in a derogatory manner as a “ringleader”, yet his status was perhaps nearer to that of the police magistrate or

<sup>48</sup> Cited in L E Skinner, *Police of the Pastoral Frontier* (1975) 111.

<sup>49</sup> Lang, *supra* note 17, 431.

<sup>50</sup> Archer, *supra* note 29, 77.

<sup>51</sup> Rev Eipper cited in Steele, *supra* note 12, 256.

<sup>52</sup> Steele, *supra* note 12, 160-61.

<sup>53</sup> This evidence was given to the court in Aboriginal English by an Indigenous man Jemmy Perowa in *R v Constable*.

judge who condemned him, as an elder ensuring the traditional legal penalties were enforced and directing those responsible in their duties.

Further evidence for this role surfaces in later incidents in the Moreton Bay district which are beyond the scope of this article. However there is one more important Indigenous action in 1846 that appears to affirm the legal interpretation of the events at Gregor's. In December 1846, only a few weeks after the attack, another huge pullen-pullen or corroboree was held near Brisbane. If Welsby is correct in his claims of a September Bunya feast this is a surprisingly short interval between gatherings. One logical explanation is that this meeting was called to review the legal retribution which had now been exacted over the Kilcoy dead. Keen notes that across the continent traditional societies found ways to limit the severity of traditional justice and to try to prevent legal punishments escalating into endless feuds. The most well-known example comes from the Makarrata agreement of the Yolgnu.

After an injury or death men of the victim's group would send a message to their enemies proposing a Makarrata to settle matters, often during a large ceremony when people of many groups were gathered. ... The killers then ran the gauntlet again as the aggrieved threw their spears...<sup>54</sup>

At Moreton Bay, too, Lang noted the role of regional meetings in enacting justice through fights but also in resolving disputes and conciliating them.<sup>55</sup> We know participants in the Gregor raid attended the pullen-pullen in December 1846. Tragically this meeting did not succeed in ending the inter-racial hostility in the region. Instead the Brisbane police alerted to the presence of one of the men accused of the murder of Gregor launched their own night-time raid on the Aboriginal camp resulting in the alleged culprit being shot in the back; his body was never recovered by the authorities for further legal scrutiny.<sup>56</sup> This action along with another unofficial reprisal by Europeans would extend the conflict for more than eight years.

Without unequivocal Indigenous evidence, this interpretation of events leading to the renowned killings of Andrew Gregor and Mary Shannon can only be tentative. The official British legal view, however, would never stand up in a court of law today and remains unsatisfactory without a wider consideration of the motives and roles of the key players. The anthropological evidence that "the concept of ancestral law places the making of rules and norms outside the realm of human action, representing them as non-arbitrary and transcending immediate relations"<sup>57</sup> lends weight to the legitimacy of the violence perpetrated by the Indigenous community in the years 1841-46. The mystery as to why the authorities were unstinting in their pursuit of the execution of Dundalli makes more sense when it is viewed not as the legal execution of one man but as an attempt to destroy the ancient legal system of southeast Queensland.

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<sup>54</sup> Keen, *supra* note 11, 265.

<sup>55</sup> See Lang, *supra* note 17, 411 for the account by Pamphlet of an assembly and fight which ended in reconciliation.

<sup>56</sup> Inquiry into affray with Aborigines at York's Hollow: sworn statements taken 25 January 1847, l/no. 47/2542 in CSIL no.10 Archival Estray 81 Dixon Library; Duncan, *Autobiography* 67-70 Mitchell Library; *Brisbane Town News* (28 December 1846) 167-68.

<sup>57</sup> Myers cited in Keen, *supra* note 11, 244.