

A Judge's Reflections on Native Title

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Shortly after I gave judgment in the *Torres Strait Sea Claim*¹ (the *Sea Claim*) I took a year's leave to take up a Chair at Cambridge University. Quite unexpectedly, Torres Strait and native title became a significant part of that year.

I was familiar with Cambridge's place in the anthropological narrative of the Strait. In 1898 – only 26 years after sovereignty was first asserted over Torres Strait Islands – a Cambridge don, AC Haddon, persuaded six others to accompany him there. From a previous visit, Haddon had appreciated there was little European knowledge of the Islanders' customs and beliefs. He apprehended that, with the changes wrought both by the dramatic growth of marine industries from the 1820s and by the advent of the London Missionary Society in 1871, the memory of what he even then considered to be a 'vanished past' needed to be recorded. The six months they spent in the Strait – which itself is seen as the modern progenitor of fieldwork-based anthropology – resulted in six volumes of Reports published between 1904 and 1935. These have very recently been republished. They understandably provided a significant part of the anthropological material used in the *Sea Claim*.

I was aware that the members of the expedition had cameras as part of their equipment. I was unaware they had a motion picture camera for a short period at the very end of their time on Mer (or Murray Island). I discovered that in my first week in Cambridge. A small poster hung on a footbridge advertised the showing of a 40-minute documentary, *The Masks of Mer*, later that week. The film recounted the Haddon expedition and contained a several minute sequence, organised by Haddon, of a secretly performed dance derived from Mer's traditional Cult of the Brethren. The dancers had created replicas in cardboard of the masks previously used, before the missionaries suppressed them and much else. This is said to be the first purely ethnographic film ever made. The actual masks used are still in Cambridge's Anthropology Museum, as is a large body of artefacts Haddon brought back to Cambridge.

During my year at Cambridge, Torres Strait and native title returned in a variety of forms – I need not expand on this here. However, I was led to reflect much on the *Sea Claim*, the *Native Title Act 1993* (Cth) (*NTA*) and on such other litigation under the *NTA* as I had experienced and, in particular, the *Noongar* (Perth) and *Larrakia* (Darwin) cases. I was invited to share some of my reflections and ruminations with you. In so doing, I will for the most part leave you with questions.

¹ *Akiba v Queensland* (No 3) (2010) 204 FCR 1.

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