

direction' to the intersection of the 5th parallel of South Latitude with the 141st meridian of East Longitude.⁸²

A subsequent agreement, concluded in April 1886, defined British and German spheres of influence in the western Pacific.⁸³ Not only was German authority confirmed over New Britain and New Ireland (the Bismarck Archipelago), but the 'conventional line of demarcation' which was drawn from the New Guinea coast along the 8th parallel of South Latitude swerved south of Shortland Island and south-west of Choiseul and Ysabel before turning north-easterly towards the central Pacific. In spite of the intermittent contact of British and Australian seafarers, traders, whalers, and missionaries with the Solomons, the northern half of this archipelago was placed under German authority (see Fig. 2).

By 1886, then, New Guinea was divided among three European powers by geometrical lines which paid scant attention to geographical features or the particular needs of the inhabitants. The following chapters discuss the boundary between Queensland and the Territory of Papua, the former Anglo-German boundary between Papua and the Trust Territory of New Guinea, and the central dividing line between east and west New Guinea, the Irian boundary.

3

Papua Irredenta

The Origin of Queensland's Northern Boundary

The New South Wales squatting district of Moreton Bay became the colony of Queensland in 1859. Large in size but small in number of inhabitants (approximately 25,000 people), the colony was preoccupied with safeguarding its boundaries. This concern soon led to insistent demands on the mother country to carry out her 'imperial task' in the south-west Pacific and to engage in territorial expansion.

Letters Patent of 6 June 1859 defined the initial boundaries of the colony. The land boundary was set out in detail; but the description of the maritime one was perfunctory. It stated nebulously that Queensland acquired 'all and every the adjacent Islands, their members and appurtenances, in the Pacific Ocean'.¹ A similarly vague phrase was employed for the Gulf of Carpentaria maritime boundary in 1862 when the Queensland territory was expanded from the 141st to the 138th meridian of East Longitude.² Given the narrow interpretation which was given to these maritime limits it could be argued that New South Wales had never abandoned title to the islands off her former coastline.³ And, indeed, in 1865 the Governor of New South Wales made use of his commission 'to lease certain islands for the purpose of working guano deposits' by issuing a seven-year lease of Raine Island—lying some sixty miles off Queensland's Cape York Peninsula—to a private individual.⁴ This development led the Queensland Governor in December 1871 to request that the Colonial Secretary extend his jurisdiction over all islands within sixty miles of the Queensland coast.⁵ This was granted in the Letters Patent of 30 May 1872 and, following the request of the Queensland Legislature, a proclamation and deed of transfer annexed the islands in August of that same year.⁶

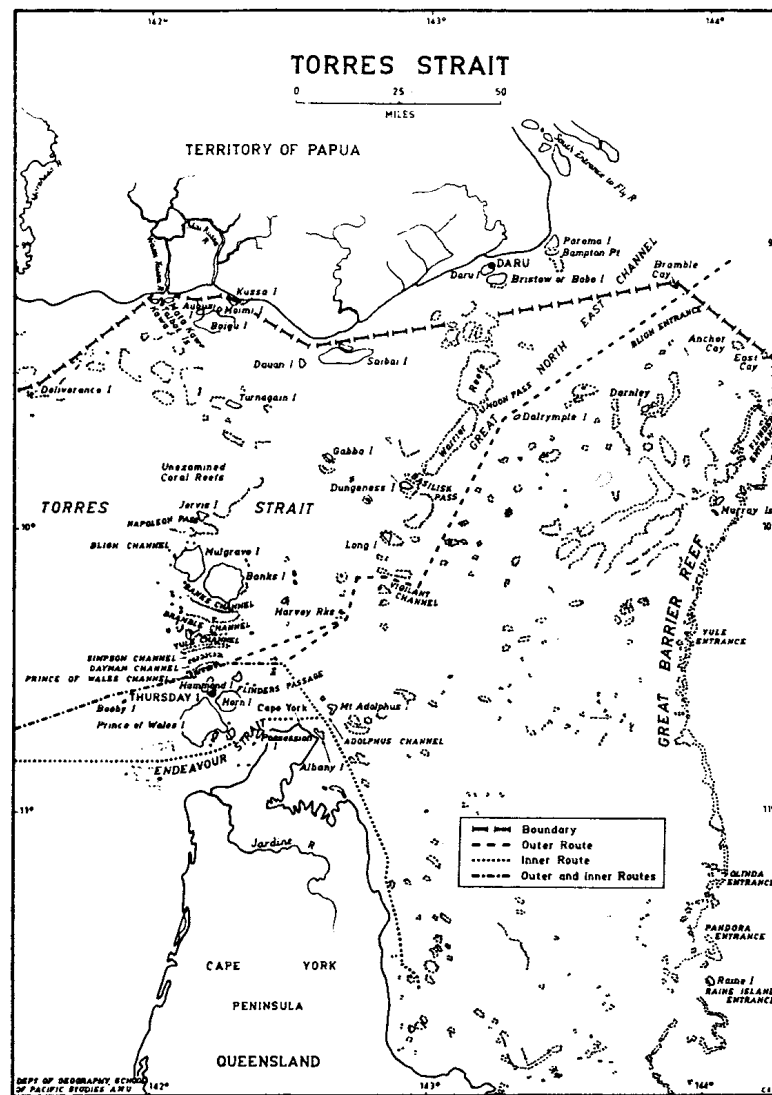
In the north, the new maritime boundary brought all of the major Torres Strait channels and all the islands from Endeavour Strait to the unexamined reefs north of Jarvis Island under Queensland jurisdiction. Government buildings were constructed at the new post of Port Kennedy on Thursday Island in 1876 (see Fig. 3). The sixty-mile range, however, did not reach the Warrior Reefs nor such islands as Dalrymple, Darnley, and the Murray group but this hardly affected the strategic command of the Strait. As Captain J. Moresby, who surveyed this area in the early 1870s, put it:

The space of thirty-six miles which lies between Jarvis Island and the low mangrove-covered coast of New Guinea is a mass of coral reefs, and contains no passage for ships, and scarcely any for boats. Thus all the passages by which ships can enter Torres Straits lie between Jarvis Island and Cape York, and are now British waters. These passages are very narrow, under two miles in width; whilst the one most generally taken—the Prince of Wales's Channel, between Hammond Island and the north-west reef—is barely a mile and a half wide. We hold this great highway of the ocean therefore on the best strategic terms. The average depth of water in these channels is only seven or eight fathoms, and a few torpedoes judiciously placed would effectually block up this route to an enemy.⁷

Ironically, the next extension of the Queensland boundary was the direct result of intensified but unsuccessful Australian demands for British annexation of New Guinea. The Colonial Office was not averse to investigating the feasibility of limited occupation of the south-eastern coast of New Guinea, and as early as 25 May 1875 it had requested the Admiralty for information 'bearing upon the suggestion that England should assert the ownership and take possession of the eastern portion of the island'.⁸ This request was soon followed by another in which the Earl of Carnarvon, then Secretary of State for the Colonies, suggested that a survey be made of that part of the New Guinea coast 'more immediately opposite Cape York' as it seemed important that Britain should 'at any moment be in a position to secure the best situation for the formation of a Settlement . . .'.⁹

Before answering these requests, the Admiralty asked the advice of Captain F. J. Evans, the Admiralty hydrographer. Evans thought that the area had been adequately surveyed.¹⁰ He pointed out that navigation between Banks Island and the mainland of New Guinea was practically closed to all but small vessels by innumerable coral reefs and sand banks while the New Guinea seaboard opposite Cape York consisted of an almost unbroken line of mangroves, fringed with a mud bank from a half to one and a half miles from the shore. The off-shore islands of the Talbot group and Saibai were low and swampy. Only Tanan Island (Dauan Island), near Saibai, appeared 'suited for an outpost' and Evans concluded that occupation of that island 'would practically give possession of the mainland of New Guinea immediately opposite to Cape York, and at the narrowest part of Torres Strait'.

The coastal Papuan islands were offered to Queensland in a communication from the Earl of Carnarvon to the Governor of Queensland in early 1877.¹¹ A tracing of the existing and the proposed boundary was prepared by Commander G. P. Heath, the Brisbane portmaster, and forwarded to the Colonial Office and the Admiralty early in 1878 for scrutiny by Captain Evans.¹² Evans stated there could be no objection, as far as Admiralty was concerned, to acquisition by Queensland, as these islands were 'geographically a part of the outer sea-board of Australia . . .'. In recommending the Heath proposal with minor modifications, Evans defined the proposed Queensland maritime boundary as:



3 The Torres Strait

All islands included within a line drawn from Sandy Cape northward to the S.E. limit of Great Barrier reefs, thence following the line of the Great Barrier reefs to their N.E. extremity near the latitude of $9^{\circ} 1/2$ S., thence in a N.W. direction, embracing East, Anchor, and Bramble Cays. From Bramble Cays in a line W. by S. ($S. 79^{\circ} W.$) true, embracing Warrior Reef, Saibai, Juan [sic], and Deliverance Islands, and onwards in the same W. by S. (true) direction to the meridian of 138° East longitude.¹³

Except for the addition to this definition of the Talbot group, Evans's version was incorporated into the Order in Council of 10 October 1878 and the Queensland Coast Islands Act of 1879.¹⁴

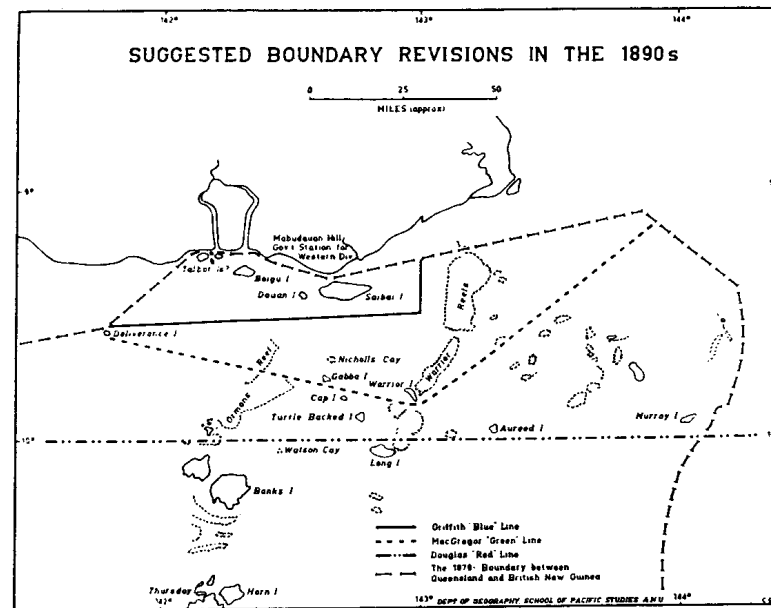
One student of this period quotes approvingly the statement by a Colonial Office official that the coastal New Guinea islands were offered to Queensland 'as a test of the sincerity of the desires of the Australians for annexation [of New Guinea]'.¹⁵ This may be too narrow an interpretation. It was already obvious that the Australian colonists wanted British annexation but without Australian financial contributions. And Queensland authorities saw the boundary extension as an answer to a need for 'real authority to deal with the somewhat doubtful characters' connected with the economically significant pearling industry.¹⁶ It and the new settlement at Thursday Island stood to benefit from exclusive control by Queensland of the Torres Strait islands.¹⁷ Finally, it could well be that British policy-makers hoped that an extension of the boundary to the coast of New Guinea would satisfy colonial moderates and take the wind out of the sails of rabid New Guinea annexationists.

Proposals for Boundary Revision

The northward extension of the Queensland boundary, which passed unopposed in 1879, soon came to be regarded differently. Queensland's Thursday Island magistrate exercised no real authority over the coastal New Guinea islands because of lack of transportation, and it was quickly realized that Queensland laws were entirely inapplicable to this area. The event, however, which radically altered the *status quo* and exposed the anomalous situation was the establishment of a protectorate over the south-eastern coasts of New Guinea in 1884 and their annexation in 1888. Not only did the Queensland acquisition of islands off the New Guinea coast lose its *raison d'être* now that this part of New Guinea was in British hands, but it hampered the administration of the western division of British New Guinea, and deprived it of much-needed sources of employment and revenue.

Proposals for a boundary revision were made by the Honourable John Douglas as resident magistrate of Thursday Island as early as 1885, by Sir Samuel Griffith (Queensland Premier) in 1893, and in the same year by Sir William MacGregor, Administrator for British New Guinea. Serious attention was given to them in the 1890s. The proposals were carefully traced in red, blue, and green on a chart of Torres Strait which was enclosed in official correspondence on the subject (see Fig. 4). Subsequent communications often referred to the 'Red Line', the 'Blue Line', and the 'Green Line'.

Before discussing the Douglas, Griffith, and MacGregor proposals it seems appropriate to state that the native inhabitants of the area not only had no knowledge of the 'paper war' but in all likelihood (as in so many other cases in which European administrations had superimposed their frontiers across the paths of the original inhabitants) were unaware



4 Suggested Torres Strait Border Revisions

of the existence of a Queensland boundary.¹⁸ MacGregor makes this clear in one of his despatches when, commenting on the areas in which his subjects were fishing, he states: 'They of course fish wherever they wish to do so without reference to boundary lines so that they practically suffer from little inconvenience in that matter so long as respect for the boundary line is not enforced'.¹⁹ Even after the inhabitants of Saibai and neighbouring islands knew that they should not cross into Papua and that selling liquor to natives was prohibited, it was not possible to punish them for their acts—unless caught red-handed within Papuan territory. In 1903, Resident Magistrate A. H. Jear reported:

The natives of Saibai are well aware that the Officers of New Guinea cannot interfere with them in their own territory, and treat any warning that may be given them with the greatest indifference and even derision.²⁰

At the same time, the Torres Strait pearling industry exercised a noticeable pull on the labour potential of coastal Papua. Several Kiwai islanders, for example, were employed in the industry and were thus exposed to the 'corrupting' influences of life in the Strait and at Thursday Island.²¹

The Douglas proposal for a boundary revision was first made in a report to the Colonial Secretary in 1885.²² Though his report is verbose and full of clichés, Douglas's central theme is clear: a readjustment of the maritime boundary had been rendered desirable by the establishment

of the protectorate over New Guinea. He doubted whether the people of Queensland attached any particular importance to the possession of the Torres Strait islands, including the Prince of Wales group:

They regard them, if I am not mistaken, rather as sources of probable future expenditure than as sources of revenue. It must be admitted, also, that this is a region in which the native or coloured races will, in all human probability, preponderate. Such a condition of society is not in accordance with the genius of the people of Queensland.

Douglas further observed that the 'territorial definitions of the present are not binding on futurity, if more convenient arrangements for the purposes of government can be made', and concluded his argument as follows:

My proposition is that the islands of Torres Straits, including the Prince of Wales Group, should be transferred to the New Guinea Protectorate. If this suggestion should be adopted, it will be nothing more than a re-adjustment of administrative responsibility by which the inhabitants on both sides of the Straits would benefit, and by which their interests in common will be advanced. I feel sure that I shall not appeal to you in vain for a correct estimate of the position; and if you are disposed to deal with it, either in the form in which it presents itself to me, or in any other, I hope that you will, at your early convenience, address Her Majesty's Government on the subject.

Douglas's views may have seemed extreme to his contemporaries, but his observations with regard to the changed circumstances prevailing after the establishment of the British protectorate and the difficulty of carrying out Queensland authority and applying its laws did not fail to make an impression. He modified his stand, moreover, in the following years to the extent that he would draw the boundary along the 10th parallel of South Latitude which would retain the Prince of Wales group for Queensland and guarantee exclusive control of the main navigable channels in the western Torres Strait area.

In his visit to Thursday Island and the northern ports in 1892, the Queensland Premier, Sir Samuel Griffith, took the opportunity of visiting the coastal New Guinea islands of Saibai and Dauan. He had known that the situation was absurd but his trip convinced him that it was much more absurd than he had visualized.²³ To correct the anomaly he submitted a rather lengthy memorandum to Sir Henry Norman, the Governor of Queensland.²⁴

In his memorandum, Griffith noted the absence of any real government in the islands along the shore of New Guinea (there is 'a Chief recognized by the Queensland Government, and four natives [who] receive pay at the rate of £1 per annum as policemen') and the inapplicability of Queensland laws 'framed for the government of civilized and not of primitive people'. There also seems to have been no doubt in Griffith's mind that the coastal islanders belonged ethnologically and geographically to New Guinea. The only difficulty envisaged by him in

a territorial transfer was the considerable number of men employed in the Queensland pearl-shell fishery with headquarters at Thursday Island. But this problem could be solved by an ordinance allowing the continuation of their employment. Griffith concluded with the following recommendation:

For the purpose of the rectification of the boundary between Queensland and British New Guinea I would suggest that the dividing line should be so amended as to include within Queensland jurisdiction the Warrior Reefs (which have for some years been largely fished by Queensland vessels) and Turn Again and Deliverance Islands (which are uninhabited), but leaving all the islands to the north of a line skirting the northern limit of those localities within the jurisdiction of British New Guinea. This line of demarcation would include Saibai, Dauan, Boigu, and the rest of the Talbot group within the limits of British New Guinea.

... I have now the honour to request Your Excellency to be good enough to submit the matter for the consideration of the Secretary of State, and of Sir William MacGregor.

Sir William MacGregor was asked by Sir Henry Norman to comment on the Griffith memorandum. He replied that he had long been of the opinion that the present division of jurisdiction was 'anomalous and unfair to the Possession'.²⁵ Geographically, the situation was unsound: 'A look at the map will convince any person that the Queensland territory encroaches unduly on the Possession'. Not only did the boundary come 'within one or two hundred yards' of the Papuan mainland at the Talbot group but it was wellnigh impossible to go west from the government station at Mabudauan (opposite Saibai) without crossing some part of the Queensland jurisdiction. Economically, the existing boundary cut off all the fishing grounds—including the sedentary ones for pearl-shell and *bêche-de-mer*—which by nature should belong to the Possession. This deprived people of a livelihood and unfairly affected the finances of the Possession. And, finally, MacGregor pointed to the people's cultural affinity: 'The inhabitants of Boigu, Dauan, Saibai, and Warrior Isd. have intimate intercourse with the New Guinea tribes, and they obtain much of their food from the Possession They approach each other in customs and have intertraded from time immemorial [*sic*].'

MacGregor agreed with Griffith that the people of the coastal islands should be permitted to continue their participation in the Queensland Torres Strait fisheries. But—after a few compliments—he sharply disagreed with the views of the Queensland Premier on the demarcation of the new border:

The line of boundary proposed by Sir Samuel Griffith is not in my opinion a fair one. It is a generous proposal to this extent, that it contemplates the voluntary cession, for no equivalent, of a certain amount of territory now comprised within the boundary of Queensland. And further I would respectfully say that the proposal is one

that is highly creditable to Your Excellency's Government as being made solely out of consideration for the native inhabitants of the islands concerned. What I mean is this, Sir Samuel Griffith's proposal would not restore to the Possession anything at all like what would be a fair share of the Straits fishery. It would give to the Possession a mere fringe of what it would have received had the two colonies been simultaneously created and a fair division of the Straits been made between them. . . . I respectfully submit that the whole of the Warrior Reef north of the Warrior Island should be added to British New Guinea. The boundary I would suggest would go from Bramble Cay to Basilisk Pass on the South side thence to Warrior Island (Tuti), thence to Deliverance Island.

Considerable time elapsed after the Griffith and MacGregor proposals, a delay partly due to the resignation of Griffith from the leadership of the Queensland Liberal Party and his appointment as Chief Justice (in March 1893). But finally, on 31 August 1894, the Queensland Premier, Hugh Nelson, informed the Governor, Sir Henry Norman, that the government recommended a boundary rectification on the basis of the 'Blue Line' which had been suggested by Sir Samuel Griffith.²⁶ A few months later, Lord Ripon informed Sir Henry Norman that his government saw no objection to the proposal and approved it in principle.²⁷

MacGregor expressed great disappointment at the Queensland government's decision. In two communications to the Colonial Office in March and April 1895, he re-emphasized the importance of a share in the fishing grounds of the Torres Strait for the coastal tribes.²⁸ The area north of the 'Green Line' was, in his opinion, the minimum that should be transferred:

It is the smallest that permits of a free passage from east to west without entering the jurisdiction of Queensland. It is the least that could be proposed if regard is had to any distribution of the natural fishing grounds, and it goes no further south than is absolutely necessary to secure for the west coast of the Possession, its geographical, its natural and its only halting places.

Although informed of MacGregor's communications the Queensland government maintained its previous position.²⁹ The British government then issued its Order in Council of 29 June 1896 revising the boundary on the basis of the Griffith proposal—subject to the approval of the Queensland legislature.³⁰

The drawn-out discussions seemed to have come to a close. It was MacGregor, however, who bounced the issue back into the arena and snatched victory—a Pyrrhic one!—out of the hands of his opponents. Following a request by the Secretary of State for the Colonies (made during the preceding year) for further information about the Torres Strait fishing grounds, MacGregor personally visited the area in the early part of 1896. In his masterly despatch of 12 June 1896 to the Governor of Queensland, MacGregor recorded that he had spent nearly a week on

the Torres Strait reefs nearest the boundary line accompanied by some of the leaders of the coastal tribes. While there he had determined the geographical position of some of these points by astronomical observation and triangulation and had entered these data on a chart.³¹ He announced:

The result of a recent examination of it [the fishing grounds] by myself on the ground has been that it has been found that the boundary at present existing or the boundary proposed by the Government of Queensland would, if maintained and insisted upon, inflict a great and unbearable injustice on several of our coast tribes. So clear is this that I entertain no doubt whatever that when the circumstances are known to the Government [of] Queensland they will be willing to modify their proposals. . . . In all probability neither the Government of Queensland nor the Secretary of State for the Colonies knew at the time this boundary line was established that it put a great, perhaps the greater part of the fishing grounds of these tribes on the Queensland side of the line. I wish to say respectfully but clearly and distinctly that these tribes cannot without injustice and oppression be cut off from these fishing grounds any more than they can be deprived of their hereditary garden lands. The reefs yield them crops that never fail.³²

MacGregor requested the establishment of a joint committee to make a final report on the matter in order to arrive at 'a full knowledge of the facts'. He expressed no doubt that the Governor would agree 'in thinking that the Secretary of State should not be asked to finally decide on this question of boundary until the matter of these fishing rights has been thoroughly examined'.

MacGregor's despatch reached the Queensland government just ahead of the 1896 Order in Council from London. Not unnaturally, MacGregor's suggestion of a joint commission (with the Hon. John Douglas on the Queensland side!) did not 'commend itself', but the Queensland government did feel compelled to state that 'in view of the urgent representation made by His Excellency' (Sir William MacGregor), it was 'not intended to proceed further with the matter until after his next visit to Brisbane. . .'.³³

Pending MacGregor's visit to Brisbane, the Queensland Premier, Hugh M. Nelson, conferred with Sir Samuel Griffith and the Hon. John Douglas in October 1896. As a result of this discussion Nelson decided that 'a fair compromise' between the border advocated by MacGregor and that proposed by Queensland would be a line running from a point on the existing boundary south-east from Bramble Cay toward the centre of Warrior Reef's Moon Passage, and from there westerly, eventually passing some three miles south of Turnagain and Deliverance islands.³⁴ MacGregor, realizing that Queensland appeared to attach considerable value to Warrior Island and would not be willing to transfer it to British New Guinea, accepted the latest Queensland proposal as the next best arrangement which would give British New Guinea a

'fairly equitable boundary as regards the fishing grounds of our coast tribes'.³⁵

Subsequent information from persons interested in the pearl-shelling industry that a considerable quantity of shell was obtained near Turnagain and Deliverance islands briefly led Nelson to back down on his proposal to the extent that he suggested Queensland and British New Guinea pass legislation which 'would admit of reciprocal recognition of pearl shelling licenses'. MacGregor, however, indicated that 'in the interests of the Possession' he could not recommend this plan and the suggestion was dropped. Nelson then asked the Queensland Governor to request the Secretary of State for the Colonies to secure the necessary amendment of the Order in Council of 1896 and promised that 'If this can be done sufficiently soon the Government will undertake to submit to Parliament during next Session a Bill consenting to the alteration'.³⁶ The new Order in Council was issued on 19 May 1898 and defined the northern maritime boundary as follows:

The boundary line shall run from a point on the existing boundary three miles S.E. from Bramble Cay by a line bearing S. 55° W. (true) to a point midway between Pearce Cay and Dalrymple Island; thence by the centre of Moon Pass in Warrior Reef and by a line bearing S. 88° W. (true) passing three miles S. of Turnagain and Deliverance Islands (Westerly); thence W. by S. (true) to the meridian of 138° of E. longitude.³⁷

The Order in Council, however, was never submitted for Queensland parliamentary approval. The kindest interpretation one could give to this 'oversight' is that the several Queensland elections and the two referenda on federation left no time for its implementation before the establishment of the Commonwealth of Australia. The polite reminder by the new Lieutenant-Governor of British New Guinea, George R. Le Hunte, in September 1899,³⁸ was not acknowledged by Sir Samuel Griffith (then Lieutenant-Governor of Queensland) until April 1900. The reply merely conveyed the words of Mr Philp (the Premier) that 'the question of introducing a Bill for the purpose [of readjusting the boundary] will receive the full consideration of the Government if time permits between the next meeting of Parliament and the establishment of the Commonwealth of Australia'.³⁹ In September 1901 the Queensland Premier replied to a communication from Le Hunte that the Order in Council of 1898 was issued before the establishment of the Commonwealth, that no measure dealing with the subject had up to the present been passed by the Queensland legislature, and that the Parliament of that state had no power to take action with regard to the Order as this was a question for the consent of the Federal Parliament.⁴⁰ A disappointed Le Hunte noted in his Annual Report that 'the long unfulfilled promise of the Queensland government' had not yet come about and that the matter still stood as 'an inequitable, arbitrary and purely unnecessary injustice to the Possession'.⁴¹

The boundary issue, nevertheless, continued to bubble during the following years. In July 1902, in Federal Parliament, L. E. Groom (Member for Queensland's Darling Downs) asked the Attorney-General to invite the government of Queensland to supply copies of the correspondence which had passed between the Secretary of State for the Colonies and the Queensland government 'with respect to the consent of Queensland to alterations of the boundary of that State' in pursuance of the Order in Council of 1898.⁴² The request was passed on to the Queensland government.

Two events raised fresh hopes for solving the problem in 1903: despatches from New Guinea and a public lecture by Douglas. In enclosing the report of the Resident Magistrate of the Western District, A. H. Jear, in which the evils of the existing situation were once again spelled out, the Administrator of British New Guinea, C. S. Robinson, begged the Governor-General for action:

In view of the present unsatisfactory *modus vivendi* as disclosed in Mr Jear's report, and of the facts in addition that the laws of Queensland are inadequate to cope with the evils, and that the Queensland Government does not appear to be interested in exercising the slightest control over the natives of Saibai, I strongly urge that in the interests of all the natives concerned, and of this Government, that the redemption of the promise of the Queensland Government, albeit that such a promise may have been tentative merely, should be insisted upon.⁴³

The Robinson memorandum was forwarded to the Prime Minister on 5 October 1903.

The Hon. John Douglas (again Government Resident on Thursday Island) added academic brightness to the issue by delivering a paper on the 'Maritime Boundary of Queensland' to members of the Royal Geographical Society of Australasia on 22 December 1903.⁴⁴ As well as sketching the origin of the Queensland boundary and proposals for its revision, Douglas illustrated the unsatisfactory nature of the boundary with examples from his experience as Government Resident. He emphasized the unsuitability of Queensland laws, lack of adequate transportation, and the unsatisfactory nature of authority exercised from Thursday Island. It was impossible, for example, to control the illicit traffic in liquor as 'unprincipled men, both white and coloured' gave or sold the islanders drink and a good deal of liquor was supplied to the New Guinea mainland through Saibai. Douglas was of the opinion that the rectification of the boundary as laid down in the Order in Council of 1898 provided a 'fair and reasonable solution of the question'. He noted, however, that a rather 'formidable lion' stood in the way: under Article 123 of the Commonwealth Constitution no federal action could be taken on the matter of altering state boundaries without the consent of the parliament of the particular state *and* the approval by that state's electors voting on the question in a referendum.

Sir Samuel Griffith (the newly appointed Chief Justice of the High Court of Australia) proposed a vote of thanks to the speaker and added his own view of the subject:

With regard to the boundary, when it was fixed in 1878, it was not unreasonable for Queensland to require to get all she could. She could not get New Guinea, but managed to get as near as possible. We followed round as close as we could get between the islands, and the coast of New Guinea, taking in practically everything. At that time all these parts were equally unknown and unsettled; but later, when New Guinea had what was after all a civilised Government . . . it became extremely absurd that some of the islands should be governed by Queensland . . .⁴⁵

As for the best way to tackle the problem, Griffith suggested that the first thing to do was 'to get the people to understand the facts'. With regard to the referendum he moved that at the next general elections ballot papers on this question should be submitted to the people and remarked that it would give him the greatest pleasure if he had the opportunity with any one concerned to take the necessary steps for this. After being seconded, the motion was carried by acclamation.

The action by the Governor-General in forwarding the despatches from British New Guinea did not lead to immediate results. It was only after a reminder had been sent to the Secretary of the External Affairs Department on 11 November 1904 that Atlee Hunt completed sending the relevant material on the boundary between Queensland and British New Guinea to the Attorney-General's Department for consultation.⁴⁶ Here it was pigeonholed and probably forgotten in the change from the Reid-McLean Ministry to the Deakin Ministry (July 1905). Reminders were sent to the Attorney-General's Department by Atlee Hunt on 30 March, 1 May, 30 May, and 20 June 1906.⁴⁷ By this time, the Governor-General's Office had once more inquired how the matter stood. The advisory opinion of Attorney-General Sir Isaac Isaacs was submitted on 28 June 1906.⁴⁸

Most relevant to the complicated matter of altering state boundaries are sections 111, 123, and 128 of the Commonwealth Constitution.⁴⁹ Sections 123 and 128 both refer to the need of securing the approval of the majority of the electors for any alteration. This requirement had been added to the original draft of these sections following the Premiers' Conference of 1899. Isaacs, however, argued that the result of these amendments was not an absolute prohibition for altering boundaries except with the consent of the electors. Section 111 made no reference to such a requirement, and as both it and section 123 were phrased in positive language (states 'may surrender' territory) it was argued that those sections provided *alternative* methods, independent of each other. Having established this point it was obviously most judicious to proceed on the basis of section 111. Still another hurdle, however, was the ques-

tion of whether the Commonwealth Parliament had the authority to give effect to the Order in Council of 1898 which preceded the establishment of the Commonwealth and whose implementation had been dependent upon approval by the Queensland Parliament. It might be possible to argue that on the basis of the provisions of the Colonial Boundaries Act of 1895 (and Clause 8 of the covering Act of the Commonwealth Constitution) the King in Council had been granted the power (with the consent of the Commonwealth Parliament) to alter the boundaries of the *Commonwealth* (and *ipso facto* those of Queensland) without reference to the electors.⁵⁰ But Sir Isaac concluded that it appeared safer to proceed with one of the following proposals:

A. to request the Imperial government to revoke the Order in Council of 1898 and substitute a new one altering the boundaries of the Commonwealth and then to obtain the approval of the Commonwealth Parliament for the boundary alteration; or

B. to ask the Queensland Parliament to surrender the islands to the Commonwealth, in accordance with section 111, whereupon the Commonwealth would transfer them to the Territory of Papua under the provisions of the Colonial Boundaries Act.

The advice of the Attorney-General was forwarded by Prime Minister Deakin to the Queensland Premier, William Kidston, on 6 August 1906. In his letter, Deakin expressed the hope that the Premier would acquiesce in the transfer of the Papuan islands and, if he did, would indicate which of the alternative courses mentioned by the Attorney-General met with approval.⁵¹ Acknowledging Deakin's letter 'regarding the status of the Islands of Saibai, Boigu, and Dauan', the Queensland Premier curtly replied that 'the question which you [Deakin] have revived concerning them will receive consideration'.⁵²

Once more, in the years 1918-19, a Resident Magistrate of the Western District of Papua revived the sleeping issue.⁵³ The 'suggested incorporation of Saibai &c in the Territory of Papua' was made the subject of a paper for the Executive Council of the Territory in March 1920, but consideration of the item was dropped.⁵⁴ Five years later the Queensland government acted, not to return the islands to Papua but to erase any possible doubts about its legal claim to them. The Letters Patent of 1900, which provided the framework of government for Queensland,⁵⁵ contained no recital of the Letters Patent of 1878—'the foundation of the whole position as to the maritime boundary':

This omission was regarded as of material importance, since it might have been used to base an argument in favour of the repeal of those Letters Patent and the consequent re-establishment of the 60-mile limit.⁵⁶

This was corrected. The Letters Patent of 10 June 1925 specifically include this previous instrument while revoking that of 29 October 1900.⁵⁷

Sedentary Fisheries

One other point—that of sedentary fisheries—deserves brief consideration because of recent developments affecting the Torres Strait area and the Territory of Papua. Australian sedentary fisheries have been regulated under various Acts since 1881. Although a certain degree of confusion existed outside Australia on what constituted Australian waters (compounded by the fact that official maps often showed the Queensland northern boundary as enclosing the whole Torres Strait area)⁶⁸ the intent of the Acts was relatively simple. They were operative on British and foreign vessels within territorial waters and on *British* ships outside territorial waters. In the case of Queensland they applied to adjacent waters outside the territorial jurisdiction within the limits set out for 'islands' in the Letters Patent of 1878 and the Queensland Coast Islands Act of 1879.⁶⁹ The Commonwealth government, in spite of the fact that most of the valuable pearling grounds in the Torres Strait area were outside the three-mile territorial belt and were being fished extensively by Japanese fleets, clung to the view that Commonwealth jurisdiction did not extend 'more than three miles from the coast or islands adjacent thereto'.⁶⁰

Negotiations were conducted with the Japanese government in the post-war period over the rights of each party to the sedentary fishing grounds. These negotiations were broken off abruptly in 1953 when the Commonwealth government grasped the opportunity provided by the recommendations of the International Law Commission to bring sedentary fisheries under the doctrine of the continental shelf which had introduced a new concept whereby the 'proclaiming' state may assume sovereignty over the sea-bed and subsoil of the shallow platforms of contiguous submarine areas to the point where there is a marked increase in slope to a greater depth.⁶¹ The delicate problem of how to protect the pearling grounds was solved by amending the Pearl Fisheries Regulations and intertwining them with the Australian Continental Shelf Proclamations of September 1953. The latter extend Australian sovereignty rights over the sea-bed and subsoil of its contiguous coasts in order to explore and exploit its natural resources.⁶² The Pearl Fisheries Regulations set out areas of 'proclaimed waters' in which it is necessary to apply for a licence 'to search for and obtain pearl shell, trochus, bêche-de-mer or green snail'.⁶³ In combination, these regulations are detrimental to the Territory of Papua. Geographically, Papua's only true continental shelf is the Torres Strait area (shared with Australia), the Gulf of Papua, and a narrow ledge running along the remainder of its shores. The inequity of the Queensland boundary brings all of the Torres Strait continental shelf with its sedentary fisheries under Australian jurisdiction.⁶⁴

The Continental Shelf Proclamations maintain a studied silence on the extent of the continental shelf, but the Pearl Fisheries Act (No. 2) refers to the 100-fathoms bathymetric contour line.⁶⁵ However, the

Pearl Fisheries Regulations apparently paid no heed to bathymetric contour lines when they gave Papua a vast triangle of proclaimed waters in the Coral Sea. From south-east of Bramble Cay (at the north-eastern extremity of the Great Barrier Reef) a 'straight line' is drawn to the intersection of parallel 19° South Latitude with the 155th meridian of East Longitude—some 800 miles east of Townsville and 1000 miles south-east of Samarai. From there the eastern border of the proclaimed waters proceeds northward along the 155th meridian to its intersection with the parallel 8° South Latitude.⁶⁶

Granting these waters to Papua is meaningless. The average depth of much of the 'proclaimed' area of the Coral Sea is between 1500 and 2500 fathoms—prohibitive for exploration and exploitation. Nor are these depths frequented by pearl-shell, bêche-de-mer, trochus, and green snail (presumably the concern of the Pearl Fisheries Regulations), as their natural habitat is restricted to the shallow waters of the continental shelf. As Goldie puts it: 'Claims to submarine areas of greater extent [than 100 fathoms] are open to the suspicion of being nothing more than "cartographical chauvinism"'.⁶⁷

The present maritime boundary between Queensland and Papua is an anachronism and contains the seeds of future conflict. An amiable adjustment is still feasible. It is now timely and would prevent a possible 'Papua irredenta'.