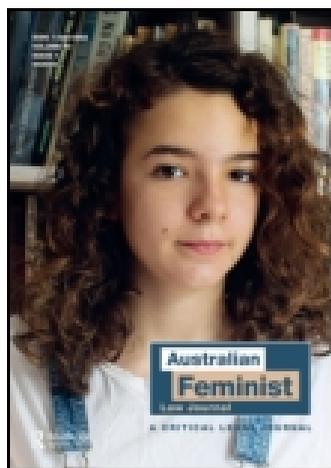


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Rebecca Monson

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UNSETTLED EXPLORATIONS OF LAW'S ARCHIVES: THE ALLURE AND ANXIETY OF SOLOMON ISLANDS' COURT RECORDS

*Rebecca Monson**

Abstract. While there is now a rich and varied literature on the 'archival turn' in other disciplines, legal scholars have had relatively little to say about their own approach to archival materials, their conceptualisation of the archive, or the ethical implications of their work. This article draws on my own engagement with the records of land commissions and courts in Solomon Islands to consider the insights that might be gained from attending not only to the content of the archive nor even to its form, but to both the allure of the archive and the anxiety it induces. I suggest that paying attention to the affective dimensions of archival work casts new light on the ethical aspects of accessing, using, and interpreting court records. Furthermore, it draws attention to legal scholars' own investments in the archive, and the quiet, mundane, and epistemic violence of the law that might otherwise go unnoticed.

1.0 INTRODUCTION

In 1893, Britain annexed the scattered islands now known as Solomon Islands, and declared them the British Solomon Islands Protectorate. Almost immediately, colonial administrators set about introducing their own conceptions of land and property; appropriating vast tracts of arable land via a series of *Waste Land Regulations*; and establishing new institutions such as land commissions and courts to hear the land disputes that inevitably arose. Unsurprisingly, land quickly became a focal point for struggles between colonial administrators, expatriate missionaries, and indigenous people. Some land was returned to indigenous claimants during the first colonial land commission, the Phillips Commission (1919–24), and other tracts were returned through a purchase program in the lead-up to independence in 1978. Large areas of the most arable land remain alienated today, but the vast majority of land is now legally categorised as 'customary land', and held according to 'current customary usage'. In general terms, this means that in Solomon Islands — as in neighbouring Papua New Guinea and Vanuatu — land tenure revolves around the settlement and use of a named place, by a named kin group, who trace their descent

*Lecturer, ANU College of Law. Email: rebecca.monson@anu.edu.au. I thank Brad Jessup and Pyone Myat Thu for their feedback regarding aspects of an early draft of this paper, and an anonymous reviewer for their insightful comments. I am indebted to the people of Kakabona who continue to support my research and learning. This work was supported by an Australian Postgraduate Award, the 2008 Australian Federation of University Women Georgina Sweet Fellowship, and an ANU College of Law Fieldwork Funding Grant.

through men, women, or both, to an apical ancestor or ancestors. While Solomon Islanders often refer to *kastom* ('custom') in ways that stress continuity with the pre-colonial past, they also regularly comment on innovations in land tenure and social relations associated with colonisation, conversion to Christianity, and the development of the cash economy.

This article reflects on aspects of archival work undertaken for a project examining historical and current innovations in customary tenure associated with colonisation and the commodification of land.¹ Land commissions and courts were important arenas for colonial attempts to control, govern, and transform colonial subjects and their land; they were and remain vital sites for the enactment, contestation, and legitimation of particular conceptions of land relations, as well as the simultaneous denial, de-legitimation, and erasure of others. I was therefore initially interested in the records of land commissions and courts for what they revealed about the arguments that have been mobilised in courts and by whom, as well as the kinds of performances that have been recognised and legitimated by the state as a particular kind of archive. As I describe further below, I was drawn to the archives and found them an irresistible academic resource, yet my engagement with the records was also marked by discomfort, anxiety, and even fear. Thus, in this article I turn my attention to the insights that might be gained from attending not only to the content of the records, nor even to their form, but to both their allure and the anxiety they induce. I demonstrate that paying attention to the affective aspects of the archive exposes the fact that the implications of the archive, and of scholarly practice relating to the archive, are particular to the time, place, and social relations in which they are situated. I suggest that consciously examining the affective aspects of the archive, including our own responses to and investments in the archive, facilitates a heightened reflexivity, and entails a deliberate effort to foreground the profound effects of the archive, and of reading and writing about the archive, on people's lives in the present and into the future, as much as in the past.

2.0 APPROACHING THE ARCHIVES

The historical moment in which my research was undertaken had a profound influence on my research, including my access to and engagement with legal records. I began my research in 2008, in the aftermath of a land-related civil conflict that occurred from 1998 to 2003. At the heart of this conflict, commonly referred to as 'the Tension', were long-standing disputes between the indigenous people of Guadalcanal, the most 'developed' island in the country, and the migrants they perceived to be disrespectful of their privileged status as the indigenous custodians of that island, in particular migrants from the neighbouring island of Malaita. The conflict resulted in the death of hundreds of people, widespread displacement, and the collapse of state-based systems of law and order.² By 2003, the country was being described as a 'failed state' and the Solomon Islands government repeatedly sought assistance from countries in the South Pacific. This eventually resulted in the

¹ Monson Rebecca *Hu Nao Save Tok? Women, Men and Land: Negotiating Property and Authority in Solomon Islands* PhD thesis Australian National University Canberra 2012.

² See further Allen Matthew *Greed and Grievance: Ex-Militants' Perspectives on the Conflict in Solomon Islands, 1998–2003* University of Hawai'i Press Honolulu 2013.

mobilisation of the Regional Assistance Mission to Solomon Islands (RAMSI), an Australian-led mission of personnel from countries across the region. It is widely recognised that many of the underlying sources of conflict remain. Intergenerational, internecine, and ethno-political disputes over land remain widespread, and are perceived by Solomon Islanders as a major source of conflict. Questions of access to and control over land are highly contested and often extremely sensitive; conducting research into land matters is generally very difficult.³

While I was certainly aware of these matters prior to commencing this project, I often learnt a great deal about the degree of sensitivity and the operation of property in practice when I attempted to access legal documents. I learnt very quickly that government records such as certificates of title were not as 'public' as I had assumed they would be. On one occasion, I sat in the hot, dusty office of one of my interlocutors as he called the Ministry of Lands, Housing, and Surveys to request information about customary land which is held on trust for his landholding group. As the fan whirred quietly above us, my interlocutor gave increasingly frustrated responses to a series of questions about who he was, what entitled him to this information, what interest he had in the land, why he wanted the information, and what he was going to do with the information. The persistent questioning seemed to stem from an underlying concern that my interlocutor would 'cause trouble' with any information he received, by using it to contest particular claims to land, potentially in court. I knew even before he had hung up the phone, with raised eyebrows and frustration etched across his face, that his request had been refused.⁴

My work in the Solomon Islands National Archives similarly drew my attention to questions of control over legal and historical documents, in particular land-related records. While I was initially excited by the sight of archive staff coming towards me with one of the boxes I had requested, my sense of anticipation often turned to disappointment as I opened them and discovered that there was very little inside. Indeed, I quickly came to expect that most of the documents I requested would be missing. While many records were lost during the Tension, I noticed that land records were particularly likely to be missing — the series of boxes I requested pertaining to the 1923 Phillips Commission were largely empty, save for a few scraps of paper bearing fragments of relatively dull correspondence. The only surviving collection of these records is held in the University of Auckland library — despite protestations by the Solomon Islands government, the entire colonial archive was transferred there by the Foreign Colonial Office in the 1980s.⁵ Copies of some

³ Several established scholars have said that the land-related research they undertook in Solomon Islands earlier in their career was no longer possible by the mid-2000s due to increased sensitivity surrounding land. They attribute this to both the Tension and an increase in commercial logging and associated disputes on the islands in which they work.

⁴ Transform Aqorau reports being unable to access information from the Department of Forestry regarding his own customary land: Aqorau Transform 'Crisis in Solomon Islands: Foraging for New Directions' in Dinnen Sinclair and Firth Stewart (eds) *Politics and Statebuilding in Solomon Islands* ANU E Press and Asia Pacific Press, Canberra 2008 p 246 at 249-50.

⁵ Wehner Monica and Maidment Ewan 'Ancestral Voices: Aspects of Archives Administration in Oceania' (1990) 26(1) *Archives and Manuscripts* 23 at 31. See also Naitoro John 'Our Cultural Heritage: Oral and Written History' in Crocombe Ron and Tuza Esau (eds) *Independence, Dependence, and Interdependence: The First 10 Years of Solomon Islands Independence* Institute of Pacific Studies USP Centre and Solomon Islands College of Higher Education Honiara 1992 p 116.

of the commission's determinations are held by some families in Solomon Islands, but are guarded as an important resource, with access generally limited to trusted family members.

I had rather more success in reviewing court records held by the Magistrates' Court in Honiara, the national capital. In this article I focus my attention on a small number of thick files concerning land disputes in one of my key study sites, Kakabona, which were handed to me by a staff member after many months and numerous visits to the court. All of these files dated from the 1980s onwards, and contained a range of documentation relevant to a matter, including the correspondence sent and received by the court; transcripts of hearings; documentary evidence such as maps; and judgments. The ideal-type court file should contain this documentation for all previous hearings through the successive levels of the court system, and although I was only able to examine a small number of files, each contained the records of numerous appeals.⁶ The transcripts of hearings provided a detailed account of the arguments made by parties and witnesses, as well as the interjections and comments from chiefs or judges; and the correspondence within the files provided valuable insight into a range of claims, allegations, and debates that were never aired in court. I am immensely grateful to the Chief Magistrate for granting me permission to access these records, and to the court staff that not only assisted me by searching for cases, but shared their time, knowledge, and over-crowded and under-resourced office space.

There is now a deep, rich, and varied literature on 'the archival turn' in a range of fields including history,⁷ historical anthropology,⁸ and postcolonial studies.⁹ However, legal scholars have had relatively little to say about their approach to the archive,¹⁰ including their use and conceptualisation of material such as court records.¹¹ This is somewhat surprising, given the centrality of law's archive to legal scholarship. While I found debates within colonial historiography, historical

⁶ As explained further below, many land disputes in Solomon Islands cycle through the court system for decades.

⁷ See, for example, Burton Antoinette *Dwelling in the Archive: Women Writing House, Home and History in Late Colonial India* Oxford University Press Oxford 2003; Douglas Bronwen 'Provocative Readings in Intransigent Archives: Finding Melanesian Women' (1999) 70(2) *Oceania* 111; Denning Greg *Performances* University of Chicago Press Chicago 1996.

⁸ See, for example, Stoler Ann Laura *Along the Archival Grain: Epistemic Anxieties and the Colonial Common Sense* Princeton University Press New Jersey 2009; Riles Annelise 'Law as Object' in Merry Sally Engle and Brenneis Donald *Law and Empire in the Pacific: Fiji and Hawai'i* School of American Research Press and James Currey Santa Fe and Oxford 2003 p 187; Miyazaki Hirokazu 'Delegating Closure' in Merry Sally Engle and Brenneis Donald (eds) *Law and Empire in the Pacific: Fiji and Hawai'i* School of American Research Press and James Currey Santa Fe and Oxford 2003 p 239.

⁹ See, for example, Spivak Guyatri Chakravorty 'The Rani of Sirmur: An Essay in Reading the Archives' (1985) 24(3) *History and Theory* 247; Spivak Guyatri Chakravorty 'Can the Subaltern Speak?' in Nelson Cary and Grossberg Lawrence (eds) *Marxism and the Interpretation of Culture* University of Chicago Press Chicago 1988 p 271; Anjali Arondekar 'Without a Trace: Sexuality and the Colonial Archive' (2005) 14(1-2) *Journal of the History of Sexuality* 10.

¹⁰ Mawani Renisa 'Law's Archive' (2012) 8 *Annual Review of Law and Social Science* 337 at 349-50.

¹¹ Cunliffe Emma "'Don't Read the Comments!': Reflections on Writing and Publishing Feminist Socio-Legal Research as a Young Scholar' (2013) 3(2) *feminists@law* at 4 Available at: <https://journals.kent.ac.uk/index.php/feministsatlaw/issue/view/9/showToc> (accessed 12 March 2014).

anthropology, and Pacific Studies particularly instructive, they rarely dealt with court records; and those that did often emphasised different conceptual or political implications to those I was attempting to highlight. Scholars trained in law often perceive or emphasise particular approaches to legal documents that are not immediately obvious to scholars not trained in law, such as treating a judgment within a court file as a source of law, capable of effecting specific ends that are not common to all documents.

In an article of particular relevance to the interpretation of legal materials in the southwest Pacific, legal scholar Sue Farran identifies two ways of reading the court records of land disputes in Vanuatu: 'as evidence of narrative of indigenous customs relating to land, revealing .. the relationship of indigenous people to the land'; and 'as narrative of evidence, reflecting the ways in which stories and histories are used to link the past with the present to assert land rights'.¹² Like Farran, I found that the court records revealed some of the ideas underpinning land tenure, such as the emphasis on narratives of origin, as well as the kinds of evidence mobilised to support a claim, such as the location of sacred sites or abandoned villages. However, this approach, like that of many legal scholars, remains largely extractive, and tends to focus on the content of the records rather than examining the form or context of the records for what they reveal about the priorities of the creators of archival documents, or the principles and practices of governance.¹³

The records of land commissions and courts in Solomon Islands provided me with important insight into the kinds of performances that have been sanctioned by the courts, as well as the ways in which litigants have invoked and reworked customary tenure so as to persuade state authorities of the veracity of their claims.¹⁴ Transcripts of Solomon Islanders' testimonies to land commissions during the early colonial period demonstrate that although they consistently invoked customary idioms in making claims to land, they also quickly responded to the imposition of new conceptions of property by adopting 'legal' language and form, as well as Christian metaphors and arguments. Thus, the semantic formulae sanctioned by the state (as well as the church) have been crucial to the ways in which Solomon Islanders have framed their claims to land.¹⁵ Judgments demonstrate the imposition of British conceptions of property on customary tenure, such as through courts' identification of 'true owners' of the land, and the dismissal of other claimants as having usufructuary rights at best, and often no rights at all. Furthermore, the repeated use of colonial judgments in the contemporary courts underscores the fact that these documents have histories and 'itineraries' of their own.¹⁶ I therefore approached court records as nested performances of property — while the stapled pages of a judgment provide a source

¹² Farran Sue 'Land, Law, Development and Narrative: A Case-Study from the South Pacific' (2010) 6 *International Journal of Law in Context* 1 at 10.

¹³ Stoler above note 8.

¹⁴ Compare Doumani Beshara 'Adjudicating Family: The Islamic Court and Disputes Between Kin in Greater Syria, 1700–1860' in Doumani Beshara (ed) *Family History in the Middle East: Household, Property and Gender* State University of New York 2003 p 173 at 175.

¹⁵ Monson above note 1.

¹⁶ Stoler above note 8 at 1.

of law and thus constitute a particular kind of performance of property by state authorities, they are simultaneously ‘surrogates’¹⁷ of the performances by claimants and witnesses who appeared before the court, and may be put to work in other performances of property in the future.¹⁸

Court records do not reveal everything that occurs within a court room, and they provide even less insight into events that occur beyond the confines of the court. By paying attention to the court records as ‘documents of exclusion’¹⁹ and noting what was absent as well as what was present, my attention was drawn to the striking marginality of women’s voices in historical and contemporary legal records, as well as to the kinds of performances of property that are neither seen nor sanctioned by the courts.²⁰ Since women rarely appear in courts as claimants or witnesses, and are rarely listed on certificates of title or logging contracts, a straight-forward reading of legal records premised on ‘fact collection’ would suggest that women have little, if any, involvement in decision-making or dispute-resolution regarding land. However, the absence of women as claimants or witnesses stood in stark contrast to the highly visible roles that women had in the customary feasts, called *tsupu*, that I observed. While the speeches at these feasts were consistently given by male leaders, women played an active role in arranging the pigs, shell money, and other goods into attractive piles; holding shell money as it passed from one group to another; and dividing the gifts among the parties involved in the exchange. These actions all entail the performance, affirmation, and denial of particular claims to land, yet their significance often goes unnoticed by scholars who focus on formal legal fora.²¹

My engagement with the records of land commissions and courts was therefore inextricably entwined with other methods such as participant observation and oral history. The literature on the ‘archival turn’ drew my attention to court records as a set of highly contested truth claims and a problematic site for the recovery of ‘subaltern’ voices.²² However, it was ultimately the striking contrast between my lived experience and observation of women’s participation in land transactions on the one hand, and their almost total silence within the legal archive on the other, that enabled me to move beyond generalisations and explore these dilemmas with any specificity. These disparities also meant that I was deeply conscious of the fact that my exploration of the court files provided me with access to narratives and statements to which I might not have been exposed via other methods, and indeed

¹⁷ Zeitlyn David ‘Anthropology in and of the Archives: Possible Futures and Contingent Pasts. Archives as Anthropological Surrogates’ (2012) 41 *Annual Review of Anthropology* 461.

¹⁸ Compare Denning Greg ‘Performing on the Beaches of The Mind: An Essay’ (2002) 41 *History and Theory* 1 and Ferguson Heather ‘Property, Language and Law: Conventions of Social Discourse in Seventeenth-Century Tarablus al-Sham’ in Doumani Beshara (ed) *Family History in the Middle East: Household, Property and Gender* State University of New York 2003 p 229 at 230.

¹⁹ Burton Antoinette ‘Introduction’ in Burton Antoinette (ed) *Archive Stories: Facts, Fictions and the Writing of History* Duke University Press Durham 2005 p 1 at 6.

²⁰ Monson Rebecca ‘Negotiating Land Tenure: Women, Men and the Transformation of Land Tenure in Solomon Islands’ in Ubink Janine (ed) *Customary Justice: Perspectives on Legal Empowerment* International Development Law Organisation and Van Vollenhoven Institute Rome and Leiden 2011 p 169.

²¹ Compare Borrows John ‘Sovereignty’s Alchemy: An Analysis of *Delgamuukw v British Columbia*’ (1999) 37(3) *Osgoode Hall Law Journal* 357.

²² Spivak 1988 above note 9 contrast Douglas above note 7.

that people might not have shared with me in other contexts or circumstances. This uneasiness deepened, and at times became acutely uncomfortable, as my understanding of the records deepened and my attempts to write about them progressed.

3.0 PROPERTY NARRATIVES: SEDUCTIVE ARCHIVES AND TROUBLESOME STORIES

The court records I accessed at the Central Magistrates' Court in Honiara all concern several parcels of land in Kakabona, a series of hamlets strung out along the coastline to the immediate west of Honiara. These hamlets are occupied by a number of matrilineages widely referred to in Pijin as *traebs* (tribes) and *sub-traebs* (sub-tribes). Each of these matrilineages is associated with one of two moieties, and there is a prohibition on intra-moieity marriage — historically, each village was comprised of people from two intermarrying groups. Despite their proximity to the national capital, villages in Kakabona have received only very limited scholarly attention. I was therefore attracted to the court records in general, and the richly detailed court transcripts in particular, as a vital documentary source of information. However, much of my learning occurred outside the archives and my engagement with the records was embedded in sustained ethnographic work. People in Kakabona were incredibly generous towards me and generally supportive of my research, and I felt welcomed into their villages, homes, and lives. I learnt a great deal while sitting with women as they sold chicken or betelnut by the road side, or 'storying' with people at the small stores selling tuna and rice. Several senior women drew me into their circles and deliberately taught me about *kastom*, inviting me to particular customary feasts and going to great lengths to explain the rituals and their significance to me in terms that I would understand. People would call out to me as I walked along the road through Kakabona, or would come out on to the road to greet me, introducing themselves as someone who had heard of me and wanted to talk about my research. Formal interviews often took over an hour — an extraordinarily generous gift to a young doctoral researcher from people who constantly struggle to balance the demands of subsistence agriculture with paid work and the burden of regular 'consultations' run by NGOs and donors.

While I always felt welcome in Kakabona, I also sensed a degree of tension, stress, and conflict, particularly surrounding land matters; I was instinctively cautious about the questions I asked and the responses I might receive. Some of the sources of this tension are relatively obvious and can be ascribed to the politics of the post-conflict period; some may be encountered in other rapidly urbanising, peri-urban areas in the western Pacific. While Kakabona was historically occupied by a relatively small number of inter-marrying matrilineages, marriage networks became much wider across the course of the twentieth century, with the result that kinship networks are no longer being reinforced within each generation of two groups already linked by blood and marriage. In addition, while patrilocal residence was historically predominant on Guadalcanal, the desirability of living close to Honiara has meant that it is now difficult to discern a dominant pattern in Kakabona. The widening patterns of marriage and residence have broadened the network of people who may *potentially* make a claim to land, and the development of a land market has been associated with an increase in the *actual* assertion of claims. The testimonies recorded in court transcripts suggest that by the 1970s, a number of

people who were indigenous to north-west Guadalcanal were selling land to migrants from other islands and from abroad (predominantly China), often without consulting other members of the landholding group, and without distributing the proceeds of sales to them. Unsurprisingly, these transactions were often highly contested, and contributed to the grievances that underlay the 1998-2003 civil conflict. During that period, Kakabona became one of the focal points for violence, and residents who were inscribed as 'Malaitan' (many were of mixed heritage) were threatened, intimidated, and evicted by militants who identified as 'Guale' (who were also often of mixed heritage). Shoot-outs between Malaitan and Guale militants regularly occurred in the hills surrounding Kakabona, and residents were cut off from Honiara when militants established bunkers and checkpoints in the vicinity of the town boundary. People fled as their homes were burned and looted, and bridges and other essential infrastructure were destroyed.

The court records I examined all related to a series of disputes that came before the chiefs and courts during the 1980s and 1990s, and provided vital insight into the conditions and conflicts that preceded the Tension. All of the disputes recorded in the files appear to have arisen following attempts by particular individuals or groups to register and then lease or sell land under Part V, Division 1 of the *Land and Titles Act* [Cap 133]. This sets out a process whereby the Commissioner of Lands may acquire customary land after a public hearing at which the 'owners' of the land are identified. The land is then transferred back to these 'owners' through registration. Land may be registered in the name of up to five 'duly authorised representatives' on behalf of the landholding group, who are joint owners on a statutory trust.²³ The entire process is extremely divisive, as it entails state authorities sanctioning the claims of some kin groups and not others to 'ownership' of the land, and approving the appointment of some people (usually men) and not others as trustees. Decisions of Land Acquisition Officers are nearly always appealed to the Magistrates' Court, with a further and final right of appeal to the High Court.²⁴ These courts often refer matters of custom back to the chiefs, and the decisions of the chiefs may be appealed to the Local Court and then to the Customary Land Appeal Court, with a final right of appeal to the High Court on a question of law.²⁵ Land disputes can therefore cycle endlessly through the courts, with questions of law being appealed to the highest court, only to be referred back down to the chiefs. Indeed this is exactly what occurred in all of the disputes in the files I examined.

Transcripts of hearings indicate that the representatives of landholding groups who appear in courts are typically senior male leaders, and their claims revolve around highly complex, fragmented, and non-linear oral histories of origin and migration; establishment of boundaries and sacred sites; and intermarriage between groups and the birth of descendants. These stories often refer to dislocation due to warfare with other groups, as well as confrontations with colonial plantation owners; some tell of factions within kin groups being cast out after contravention of the prohibition on intra-moiety marriage. Some of the recorded accounts refer to groups being displaced and then returning to resettle in earlier sites. Many refer to *tsupu*,

²³ *Land and Titles Act 1996* [Cap 133] s 195(1).

²⁴ *Land and Titles Act 1996* [Cap 133] s 66.

²⁵ *Local Courts Act* [Cap 19] ss 12–14, 28; *Land and Titles Act 1996* [Cap 133] ss 254–55.

including repeated prestations across several generations, and set out the items provided, the speeches given, and the people involved. These stories are literally embedded in the land, indexed by important sites such as existing or abandoned villages, gardens, and trees. These emplaced histories — referred to as *tutungu* by the people of Kakabona — may go back for centuries and not only tie particular individuals and groups to particular places, but construct a complex web of relationships between various groups and places across the island of Guadalcanal. Parties to a dispute typically construct their claim to ‘ownership’ of land by constructing their kin group as the first settlers of the land, or as having received it via *tsupu* from the group that first settled the land. None of the disputes I examined entailed an assertion of *exclusive* rights to land, nor were such rights ever granted by the courts. Rather, courts typically identified one lineage as the ‘owners’ of the land, and other groups as having ‘secondary’ or ‘usufructuary’ rights. The courts have therefore refrained from awarding exclusive rights to one group, but have nevertheless imposed Anglo-American legal categories (of ‘ownership’ and ‘usufruct’) upon customary arrangements. Importantly, in at least one instance the court’s imposition of a hierarchy of rights was linked to the eviction of a Malaitan man married to a Guadalcanal woman, as well as their ‘Malaitan’ children.

While I am now able to provide a relatively brief and confident description of the kinds of ‘property stories’ I encountered within the court records, this obscures not only the complexity of these narratives, but also the deep and profound sense of bewilderment, disorientation, and ignorance that I encountered as I stumbled through the pages of the court files. The description I have provided above is relatively linear, yet many of the stories were highly disjointed and disrupted, with no readily apparent temporal order. Many were peppered with events and idioms that I lacked the cultural knowledge to interpret, and I was shocked by references to extreme interpersonal violence between close kin. I spent months pouring over copies of these records, highlighting details and taking notes in their margins, then creating new photocopies and beginning the process all over again. I sketched maps, timelines of events, and family trees, hoping to keep track of my own thoughts, as well as the relationships between claimants, their grievances, the arguments they mobilised, and the conclusions reached by the courts. While my doctoral supervisor expressed concern about the amount of time I was devoting to these cases, I found myself drawn back to them, perhaps by the yawning chasm of cultural difference they represented and my desire to remediate the profound lack of understanding they lay bare. I was also captivated by the richness of the stories within their pages, and by their references to ancestors, boundaries, place names, and events that had never been mentioned to me by residents of Kakabona.

Yet the more I learnt from the records, the more ambivalent I felt. I was fascinated by the records, and they were an irresistible academic resource, however I was also profoundly uncomfortable with my deepening understanding of land matters in Kakabona, and indeed with writing and speaking about my research findings. The records I drew upon are publicly available in a formal, legal sense, but they were not easy to access, and my impression is that copies are not widely circulating in Kakabona. Furthermore, although disputes over land are fairly regular, they are not freely discussed — no-one ever discussed any specific dispute

in detail with me, and it became clear that not everyone was as familiar with the details or outcomes of particular cases as I was becoming.²⁶ I was also conscious that I was becoming familiar with information about genealogies, land claims, and rivalries that people might not have revealed to me in other circumstances. As noted above, many of the details of land claims recorded in court transcripts — such as the names of previous chiefs or warriors, specific events, and the location of sacred sites and territorial boundaries — were never mentioned to me by my interlocutors. On one occasion, while I was working on another project, an elderly man quietly mentioned that he would appreciate a copy of ‘the book’ that I had. I was initially confused by his request, but when he explained to me that I seemed to have a detailed understanding of the history of settlement of Kakabona, I realised that I had mentioned particular individuals who had long passed away, as well as events that occurred prior to World War II. My interlocutor assumed that I had gained such knowledge via a relatively unknown book regarding the history of the area.

Some of my discomfort with the court records can be traced to the norms governing access to *tutungu*. As is common in many parts of Melanesia,²⁷ knowledge about genealogies and land is subject to various restrictions and not freely available to everyone. Historically, elder men within the lineage would take responsibility for the ritual transmission of *tutungu* to younger men, typically their sister’s sons. While girls had access to some aspects of this knowledge, they were often the recipients of less detailed versions of these histories. Receiving such knowledge was also dependent on the observance of particular protocols — a fact I was reminded of when I asked a chief a particular question about the past, and was gently but firmly chastised for failing to observe such protocols. When this knowledge is mobilised in public fora such as courts, and written down in court records, it is no longer subject to these restrictions.²⁸ Furthermore, like many family histories, *tutungu* often contain information that may be a source of embarrassment or insult to descendants, such as the infraction of widely held social norms (a common example being a breach of the prohibition on intra-moeity marriage). Court records entail the conversion of *tutungu* which have historically been oral, often fiercely guarded, full of controversial information, and intended for a relatively narrow and specific audience, into legal knowledge which is comprehensible and accessible to a much wider audience including legal practitioners, state bureaucrats, and foreign researchers.

My anxiety regarding my use of the records was also associated with the understanding that in many parts of Solomon Islands, the public assertion of genealogies or claims to land is considered somewhat rude, ‘trouble-making’, and antithetical to ‘right living’.²⁹ The public oration of such information is most likely

²⁶ Compare McDougall Debra ‘The Unintended Consequences of Clarification: Development, Disputing and the Dynamics of Community in Ranongga, Solomon Islands’ (2005) 52(1) *Ethnohistory* 81 at 92.

²⁷ Lindstrom Lamont ‘Doctor, Lawyer, Wise Man, Priest: Big-Men and Knowledge in Melanesia’ (1984) 19(2) *Man* 291.

²⁸ Compare Farran above note 12 at 5.

²⁹ Compare Scott Michael ‘Ignorance is Cosmos, Knowledge is Chaos: Articulating a Cosmological Parity in the Solomon Islands’ (2000) 44(2) *Social Analysis* 56 at 60–61; Scott Michael ‘Neither “New Melanesian History” nor “New Melanesian Ethnography”: Recovering Emplaced Matrilineages in Southeast Solomon Islands’ (2007) 77(3) *Oceania* 337 at 341–42; McDougall above note 26 at 83.

to occur when there is already a dispute, often by charismatic male leaders who will draw on a variety of idioms and metaphors, invoking both humour and sorrow, as they attempt to persuade their fellow villagers of their claims. No matter how charismatic and skilled in sustaining the attention of their audiences, these orators must invariably compete with the surrounding laughter of children, waves crashing on nearby beaches, and crowing roosters. When oral histories are relayed in court rooms and recorded in court documents, they are stripped of much of this context and animated oratorical performances are rendered static. The sensitive aspects of *tutungu* not only appear more blunt and crude when transformed into stark, black script on white pages, but are brought into a new realm which may be accessible to a new audience (such as foreign researchers) while often less accessible to those who previously enjoyed wide access to oral *tutungu* (such as those who do not know how to approach the courts and request copies of records). It is perhaps unsurprising that I often felt embarrassed or ashamed while reading court transcripts, unable to shake off the uneasy feeling that I had been privy to something I should not have been.

When I read various transcripts side by side, I was often struck by the ways in which claimants adjusted their claims over time, for example by including or excluding particular ancestors from their recited *tutungu*, or asserting the primacy of particular lineages over others. I found it sad, even distressing, to see people I knew to be closely related kin confronting each other in the pages of the court files, with one group asserting that the land was held by their *sub-traeb* rather than the larger *traeb* they belonged to with their opponents, thus emphasising their differences rather than their shared heritage. In one particular matter, a lineage successfully argued that their group 'owned' the land, whereas the descendants of the lineage they had historically intermarried with were found to have 'usufructuary' rights to the land. By meticulously tracing the arguments made in a number of disputes concerning several different tracts of land, I was able to piece together the way in which claims were adjusted over time, and different aspects of *kastom* were strategically obscured and revealed. A portion of transcript from one particular dispute makes it clear that people in Kakabona, as elsewhere in Solomon Islands, are well aware that the strength of their claims depends on their knowledge of *tutungu*, as well as their ability to both conceal and reveal aspects of *tutungu* at opportune times:

Q: [In an earlier hearing] you said that [Ancestor A] owned the land now you said [Ancestor B] and [Ancestor C] are the owners which is true?

A: If you look at the chiefs' [hearing] I didn't give you all my views as I chosed [sic] my story for this appeal only.

This claimant's response to cross-examination refers to the widespread perception that a claimant may have a persuasive claim, but nevertheless fail because their audience (in this case, chiefs) is not favourable to them. A claimant who reveals too little detail may fail because their claim is unpersuasive; a claimant who reveals too much, in the wrong fora or at the wrong time, may not only fail to persuade their audience, but equip others with the information necessary to adjust, reshape, and strengthen their own claims. Information regarding historical events, the genealogical links between ancestors, or the location of sacred sites can be deeply sensitive

and even offensive, yet becomes vital in the context of a dispute. I was anxious to avoid causing offence or inflaming tensions, and therefore practised avoidance techniques of my own: while the court records could in some senses be considered ‘publicly available’, I chose not to reproduce particular material (such as details about genealogies, boundaries, or sacred sites) and to anonymise the names of individuals and lineages.³⁰

4.0 DISTURBING RECORDS AND DANGEROUS DISPUTES

In the years since the conflict, many people have returned to Kakabona and re-established their homes; houses now jostle for space in the overcrowded strip of flat land along the coastline. Local residents regularly express the view that land is in increasingly short supply due to population growth, settlement by migrants, and the increasingly individuated nature of land transactions. These concerns cannot be understood merely in material terms, and closely examining my anxiety regarding archival work provided me with vital insight into the moral economy of land tenure and the meanings embedded in the land.

Much of my anxiety surrounding my use of court records was linked to the terms in which my interlocutors described land matters. People in Kakabona often refer to land matters as ‘dangerous’ and ‘a struggle for survival’; they describe disputes as ‘a battle’ or ‘warfare’, invoking comparisons to pre-colonial headhunting raids. While foreigners generally perceive struggles over land in terms of contests over natural resources, engagement with these metaphors of danger and violence, and with the secrecy and intrigue surrounding the records, directs attention to the profoundly ontological challenges that the state legal system raises.

The *tutungu* recited in courts and (partially) recorded in the court files all involve the delineation of boundaries on the ground and between the groups that occupy the land in dispute as well as surrounding areas. The outcome of land disputes is contingent upon state authorities — whether Land Acquisition Officers, chiefs, or courts — sanctioning the claims of some people and not others to particular socio-spatial boundaries and the ownership of land. Although the courts have consistently avoided awarding exclusive rights and have recognised so-called ‘secondary’ property rights, the recognition of some groups and not others as the ‘owners’ of the land entails the affirmation of some narratives of place and identity and not others. This is an inevitable outcome of liberal property regimes, which tend to promote property rights based on exclusion and the ‘cutting’ of social networks.³¹ Anthropologists of Melanesia have often referred to these regimes as ‘Western’, and contrasted them with ‘Melanesian’ strategies, which are said to promote the incorporation of ‘others’ into social networks.³² While these distinctions have been crucial to the deconstruction of the inappropriate imposition of Western concepts

³⁰ Compare Pohlandt-McCormick Helena ‘In Good Hands: Researching the 1976 Soweto Uprising in the State Archives of South Africa’ in Burton Antoinette (ed) *Archive Stories: Facts, Fictions, and the Writing of History* Duke University Press Durham 2005 p 299 at 302.

³¹ Blomley Nicholas ‘Cuts, Flows, and the Geographies of Property’ (2011) 7 *Law, Culture and the Humanities* 203.

³² See further Bainton Nicholas ‘Keeping the Network Out of View: Mining, Distinctions and Exclusion in Melanesia’ (2009) 79(1) *Oceania* 18.

upon Melanesian land relations, they also tend to invite assessment of the 'authenticity' of the claims made by Melanesians in property disputes. Some of my anxiety about my understanding of the court records, and my writing about the narratives within them, was driven by a desire to avoid assessing particular claims (and, by extension, claimants) as more or less 'authentic', 'traditional', or 'Melanesian'.

Drawing on the work of anthropologists Michael Scott and Debra McDougall,³³ I ultimately came to understand *tutungu* as having a capacity for both expansion and contraction, or inclusion and exclusion. When residents of Kakabona affirm or deny particular aspects of their *tutungu*, they are not lying or manipulating their genealogies, but rather reinterpreting culturally persistent models of place-making and relatedness. This is because claims to land are made and legitimated by aspects of *tutungu* that construct a particular lineage and a particular place as mutually constituted, while simultaneously acknowledging cooperation with other lineages on the land. This is most strikingly demonstrated by references to intermarriage and the birth of descendants. This 'entanglement'³⁴ with other groups is vital to the productivity and indeed survival of the lineage, but it also jeopardises the privileged relationship between a lineage and its territory.³⁵

Paying attention to the affective dimensions of archival work, and to the notion of land disputes as 'dangerous' and akin to 'warfare', drew my attention to the fact that competition over land is not merely an economic struggle, but a profoundly ontological one. Colonisation and urbanisation have been associated with an increase in potential and asserted claims to land, which constitute not only a material threat, but a threat to forms of social identification and relatedness founded on the assertion of a privileged relationship to the land. Put simply, land disputes confront people with questions of who they are, and how they relate to others.³⁶ Although *tutungu* have the potential to both include and exclude particular individuals and branches of a lineage, the potential for social fragmentation is exacerbated when claims to land are contested in the courts. While *kastom* generally entails the *implicit* articulation of differential claims, 'Western' legal processes and liberal conceptions of property rights require a far more explicit, indeed even brutal, delineation of such claims. Furthermore, the process of recording oral testimony from claimants and witnesses, as well as the production of written determinations by chiefs and judges, means that not all social actors are equally positioned to gain state endorsement of their claims into the future. The loss of documents from the national archives is a direct result of Solomon Islanders' understanding that the strength of their claims is directly linked to the textual and material production of the law.

Court records provoke both interest and anxiety because they contain the details of lineage histories and matrilineal connections, the public articulation of which threatens to undermine the vital cooperation of ontologically different kinds of people.³⁷ Indeed, while I found one clear instance of an eviction following a court's determination, correspondence within the court files revealed that it is common for

³³ Scott 2000 and 2007 above note 29; McDougall above note 26.

³⁴ Scott 2007 above note 29.

³⁵ McDougall above note 26 at 93.

³⁶ Compare Miyazaki above note 8 at 242.

³⁷ Compare McDougall above note 26 at 93.

the ‘winning’ kin group to seek reconciliation, via *tsupu*, with the ‘losing’ kin group.³⁸ However, reticence to articulate lineage histories and assert social differences is equally dangerous, because it constitutes a failure to assert the identity of the group in the context of mounting threats to that identity.³⁹ The state’s legitimation of claims to property therefore works to promote the potential for social fragmentation in multiple ways: it forces sensitive *tutungu* into the public realm, and when state authorities recognise some groups and not others as the ‘owners’ of the land, they affirm some claims to a privileged relationship to the land while delegitimising others. Land disputes are, quite literally, ‘dangerous’ matters that constitute a threat to both material and ontological survival. Moreover, court records are alluring yet dangerous objects, with the potential to both sustain and threaten the survival of the group. The records I examined are both desired and suspect, because they contain, in blunt, crude terms, information that has the potential to shore up the property claims of a group, but also create tension and sever the relationships between people who have been living together for generations.⁴⁰ It is only by ignoring, hiding, overlooking, or privately hoarding both the records and their contents that disputing parties are able to affirm their commonalities; yet equally, people desire access to and control over the records so as to protect their own interests, bolster their claims, and ensure their survival.

5.0 ENCOUNTERING LAW’S VIOLENCE IN THE ARCHIVES

Restrictions on access to records, the secrecy surrounding disputes, and my interlocutors’ references to land disputes as ‘dangerous’ all drew my attention to the suspicion, anxiety, and violence that surrounds land disputes. Legal geographers Nicholas Blomley and David Correia have explored the relationship between violence and property law,⁴¹ and in a similar vein, I suggest that violence, both threatened and realised, has been central to the foundation, legitimation, and operation of the colonial and postcolonial property regime in Solomon Islands.⁴² During the early colonial period, Solomon Islanders were commonly represented to European and Australian audiences as ‘savage’ headhunters,⁴³ occupying a space beyond law, without property, and marked by violence.⁴⁴ Such constructions not only legitimated but mandated the violent ‘pacification’ and imposition of British

³⁸ As above at 92.

³⁹ Compare as above at 96.

⁴⁰ As above at 103.

⁴¹ Blomley above note 31; Blomley Nicholas ‘“Acts”, “Deeds” and the Violences of Property’ (2000) 28 *Historical Geography* 87; Blomley Nicholas ‘Law, Property and the Geography of Violence: The Frontier, the Survey, and the Grid’ (2003) 93(1) *Annals of the Association of American Geographers* 121; Correia David *Properties of Violence: Law and Land Grant Struggle in Northern New Mexico* University of Georgia Press Athens 2013.

⁴² Compare Blomley 2003 as above.

⁴³ Aswani Shankar ‘Preface: Headhunting in the Western Solomon Islands’ (2000) 109 *The Journal of Polynesian Society* 4 at 4.

⁴⁴ Compare Blomley 2003 above note 40; Banivanua Mar Tracey ‘Consolidating Violence and Colonial Rule: Discipline and Protection in Colonial Queensland’ (2005) 8 *Postcolonial Studies* 303; Banivanua Mar Tracey ‘Frontier Space and the Reification of the Rule of Law: Colonial Negotiations in the Western Pacific, 1870–74’ (2009) 30 *The Australian Feminist Law Journal* 23.

law over both indigenous peoples and their places. They also justified the appropriation of indigenous lands as well as the violence (actual or implied) used to evict, arrest, and prosecute indigenous 'trespassers'.⁴⁵ Furthermore, the codes of access, belonging, and exclusion that were introduced by the colonial state continue to be implicated in the violence of property today. This was particularly visible during the Tension, when Guadalcanal militants drew on colonial categories of territory and ethnicity as they violently expelled migrants, citing the failure of the state to protect their rights as indigenous landowners.⁴⁶ However, I suggest that the violence of property entails not only highly visible forms of physical violence involving guns, but also the quiet, everyday, and epistemic violence of law's texts.⁴⁷

As 'mere' documents, court records may appear to be relatively innocuous reports of 'facts', yet John Comaroff reminds us that the investigation, documentation, and legislation of land tenure is also a form of 'lawfare'.⁴⁸ Examining my own gravitation towards and anxiety about the archive, as well as that which I perceived amongst my interlocutors, drew my attention to the violence — whether threatened or actual — that arises when land disputes enter the arena of the state, and disputing parties and state authorities incorporate the idioms of state law into ancestral models of place-making and relatedness. The records themselves are steeped in dispossession and violence, for within their pages oral histories are wrenched from the land and people to whom they belong and are rendered static; boundaries are cut through the land and through lineages; transitory moments of conflict in which differences are asserted are frozen in time; acts of reconciliation which occur outside the courts and rebuild unity are ignored; and some oral histories are endorsed while others are erased. Court records do not simply record the violence of property, for as Renisa Mawani notes, law and its documents are mutually constitutive. This gives rise to 'a mutual and reciprocal violence of law as symbolic and material force and law as document and documentation'.⁴⁹ A straight-forward example lies in the use of the records of land commissions and courts as both precedent and evidence. Law's archive 'obfuscates certain narrations of the past and privileges others',⁵⁰ with implications for contests over land well into the future. Struggles over law's archive — manifest in the limitations on access to information listed in 'public' documents held in government ministries, the relocation of colonial records to Auckland rather than Honiara, and the disappearance of records from the national archives — are equally struggles over property rights, and questions of physical control over and access to the archive have a crucial influence on the historical trajectory of land relations.

⁴⁵ Correia above note 40 at 11.

⁴⁶ Monson Rebecca and Hoa'au George '(Em)placing Law: Migration, Belonging and Place in Solomon Islands' in Jenkins Fiona Nolan Mark Rubenstein Kim (eds) *Allegiance and Identity in a Globalised World* Cambridge University Press Cambridge forthcoming 2014.

⁴⁷ I use the term 'epistemic violence' in the sense developed by Spivak, to refer to the erasure of particular forms of knowledge and the privileging of other epistemic practices. See, for example, Spivak above note 9.

⁴⁸ Comaroff John 'Colonialism, Culture, and the Law: A Foreword' (2001) 26(2) *Law and Social Inquiry* 305 at 306.

⁴⁹ Mawani above note 10 at 337.

⁵⁰ As above at 342.

Despite the centrality of legal records to both legal practice and scholarship, legal scholars have been relatively silent about their methods of archival labour, and their own investments in the reproduction of the archive.⁵¹ Most legal scholars approach archival work as an extractive exercise, ‘mining’ the contents of the archive and remaining silent as to the ethical implications of their work. In my own case, it was rather difficult to overlook or ignore my own role in the relationship between past and present, and the fact that in reading, writing, and re-presenting land claims I am also involved in the enactment of land relations:⁵² academic literature is not only regularly used as evidence in the courts in Solomon Islands, but is *prima facie* evidence of the property rights it asserts.⁵³ This perpetuates the epistemic violence of the law, constructing documentary evidence as inherently more reliable than oral evidence; asserting the authority of scholars who write over that of indigenous experts whose knowledge is presented only in oral form; and ultimately rendering academics and bureaucrats the arbiters of who belongs, where they belong, and how they belong.

⁵¹ Compare Burton Antoinette ‘Thinking Beyond the Boundaries: Empire, Feminism and the Domains of History’ (2001) 26(1) *Social History* 60 at 66–67.

⁵² Compare Denning above note 18 at 3–4.

⁵³ *Land and Titles Act 1996* [Cap 133] s 239(2). For a specific instance of a report being used to support land claims, see Schneider Gerhard *Land Dispute and Tradition in Munda, Roviana Lagoon, New Georgia Island, Solomon Islands: From Headhunting to the Quest for the Control of Land* PhD Thesis University of Cambridge 1996.