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Development Studies Centre
Monograph no.13

**Practice
without policy:
genesis of local
government in
Papua New Guinea**

D.M.Fenbury



**Practice
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Series editor RTShand

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Summary

As the officer charged with establishing Papua New Guinea's first elected local councils in the 1950s, mainly on the Gazelle Peninsula, David Fenbury details the practical tasks of explanation and persuasion in the villages, of winning co-operation from an uncomprehending and sometimes hostile bureaucracy, of procuring physical and financial resources and helping councils - often literally - to use them.

He recalls his attempts, with a few like-minded colleagues, to convince higher authority (including the Minister, P.M.C. Hasluck) of the need to restore general native taxation, to reform and sensitize the territorial administration, to establish village courts, to deal firmly with organised opposition to the council system, and to enlist councils as promoters and mediators of economic and social change.

Fenbury's arguments, here first published in full, were mostly ignored, rejected or misunderstood. By the mid-1970s, disenchantment with local government was widespread. This volume is an indispensable document for understanding what happened.

Foreword

David Maxwell Fenbury was born in Perth, Western Australia, on 24 March 1916. After graduating in Arts at the University of Western Australia he served as a patrol officer in the New Britain and Sepik Districts of the New Guinea mandate from 1937 to 1941 when he enlisted in artillery in the 2nd A.I.F. From late 1942 until the end of the war he served in various operational areas in the Australian New Guinea Administrative Unit of New Guinea Force, reaching the rank of captain. He won the Military Cross and was mentioned in despatches.

After a secondment to the British Colonial Service in Tanganyika and London, Fenbury returned to the now unified public service of Papua-New Guinea, renamed Papua and New Guinea in 1949. In December of that year he was entrusted - as 'Senior Native Authorities Officer' - with launching elected native local government councils in the Territory as authorised by the Papua and New Guinea Act and the Native Village Councils Ordinance, both passed earlier in the year. This book is Fenbury's account of his work in that post, mainly on the Gazelle Peninsula during the early 1950s.

Moving to Port Moresby in 1954, Fenbury was made a District Commissioner the following year, but immediately appointed as Executive Officer in the newly-created Department of the Administrator, where his direct responsibility for local government administration ended early in 1956. From June 1956 to July 1958 Fenbury was Australian government nominee (as area specialist) in the Trusteeship Division of the United Nations Secretariat, New York. He became Secretary of the Department of the Administrator in February 1962, and was transferred as Secretary to the Department of Social Development and Home Affairs at its formation in July 1969. On Fenbury's retirement from the Territory public service in March 1973 his Papuan ministerial head, Dr (now Sir) John Guise, paying tribute on behalf of the government in the Papua New Guinea House of Assembly, said:

... I would like to place on record my appreciation of his services. It has always been meaningful to me to work with him because he is a man of strong character. He was no rubber stamp for anybody ... His life of devoted service to this country was not without frustration. There were plenty out for him, but he rose above that and carried out his work to the best of his ability for this country (H. of A. Debates: Third House, vol.III, 13 March 1973, pp.1773-4).

After much hesitation, Fenbury then accepted a Visiting Fellowship at the Australian National University which would afford him facilities for writing a personal account of the vicissitudes of local government during its formative years. He was uniquely equipped for the task, both by intimate first-hand experience and by a quality of mind and pen unrivalled among all those concerned with the government of Papua and New Guinea in his time. The result is a work which is quite unusual among the published writings on Australian government activity in that country. We have books by and about political and administrative heads in Canberra and Port Moresby, and by and about bush *kiaps*. We have no books by senior officers who were involved in framing policy and putting it into practice in 'settled' districts. The present work thus provides a unique view of how government officers operated at that level, and is an essential complement to the writing centred on headquarters or the bush.

This is not the place for an assessment of Fenbury's administrative style, of his obviously controversial views on important aspects of colonial policy, or of the various factors which hindered the accomplishment of his aims. In preparing his local government manuscript for publication the object has been to preserve its character as a presentation of Fenbury's own experiences, attitudes and reflections. As his Preface makes clear, he was not attempting a comprehensive survey of the history of Papua and New Guinea local government as a whole; his work is offered as one indispensable document for that history.

At the date of Fenbury's untimely death on 14 May 1976 after a period of serious illness, he had completed the preface and the best part of Chapters 1 to 6 of his book, and he left a rough plan and fragmentary drafts of the remainder together with a number of proposed appendices and the substantial collection of his personal papers which will

eventually be deposited in an appropriate library. From these, Chapters 5 and 6 were completed, Chapters 7 to 9 and the Appendices assembled and the work as a whole checked and edited. In this task I had the invaluable aid of Mrs Helen Fenbury in particular, of members of the Political Science department staff and of Mr Colin Liddle, one of Fenbury's early colleagues on the *Gazelle*. The method adopted was to complete the book on the lines sketched out by Fenbury, using as far as possible only verbatim extracts from the papers (in almost all cases written by Fenbury himself). Except for obvious typographical errors, the punctuation, capitalisation and spelling of the original documents have been retained. The brief connecting passages needed to complete Chapters 5 and 6 are printed in italics for easy identification. In Chapters 7 to 9 the passages not within quotation marks are my own summaries of material in the Fenbury papers. For all inserted passages, for the selection of the extracts they introduce and of the Appendices, for the list of References and for the editing and title of the work, I accept sole responsibility. Fenbury wrote those Appendices which are not quotations from original documents.

I am sincerely grateful for the devoted help of the people mentioned above, and for the maps which were produced by the mapping section of the Department of Human Geography, Research School of Pacific Studies.

R.S. Parker

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Note: £A1 = \$A2

Preface

In the halcyon days of colonial tutelage when time was plentiful and the 'transfer' of Western institutions seemed the greatest boom which that tutelage could confer on dependent races, elective local government was held to be an indispensable link in the flimsy chain that - in the minds of European administrators - was ultimately to bind native rulers to the ruled. Since there is not much of that kind of local government now left in countries that were colonies at the end of the second world war, it is at least historically intriguing to ask what went wrong. Was the whole exercise misconceived? Did it fail from faulty midwifery on the part of the administrators? Or were these institutions of local democracy, despite the good intentions of their creators, betrayed by self-seeking indigenous politicians?

Such questions still have a certain practical urgency in Niugini.¹ Elected local councils survive there in large numbers and retain legitimacy among the new rulers as well as the old - though the system has patently disappointed many of those most closely associated with it, whether as voters or taxpayers or as its administrative midwives and nursemaids. I was one of the latter in the early 1950s, and the following essay is essentially a personal recollection of some of the factors that - at least in my view - affected the strategy and tactics of the official pioneers of Niugini local government. The essay is mainly concerned with the period 1950 to 1955 when I was the senior official (and initially the only official) responsible to the Administrator of Niugini, through the Director of District Services and Native Affairs, for supervising the birth and turbulent infancy of the first Niuginian 'native local government councils'. I remained officially concerned from time to time with some aspects of local government until my retirement from Niugini in 1973, but after early 1956 I was no longer a direct participant.

¹For convenience I retain the practice I adopted some years ago of using the terms 'Niugini' and 'Niuginian', wherever possible, when referring to Papua New Guinea and its indigenous population.

My story takes for granted a knowledge of the social and political background of the events it narrates. Historical accounts of Niugini between 1884 and 1949 abound - from journalists' essays of varying quality to the works of social scientists including S.W. Reed, H.I. Hogbin and A.L. Epstein. Dr L.P. Mair's *Australia in New Guinea* (1948 and 1970) contains a more comprehensive, though less detailed, survey of the pre-contact situation, the period following the assumption of political control by European powers, and the administrative system developed by Australia, first in Papua and then in what became the Mandated Territory and later the United Nations Trust Territory of New Guinea.

The reader will be aware of the limitations inherent in an account of the present kind. It is bound to be marred by faded memories, subjective judgments and personal discontents. Even the personal papers and diaries from the 1950-1955 period, on which I have mainly relied, supply a far from adequate record. At least I have tried to minimise *post hoc* rationalisations and distortions by quoting directly from these papers where possible (and occasionally at some length). Further, I have not attempted a complete account of the local government policy, but rather to supplement and amplify certain aspects of the much better documented works of such scholars as Healy, Mair, Oram, Waddell and the Epsteins.

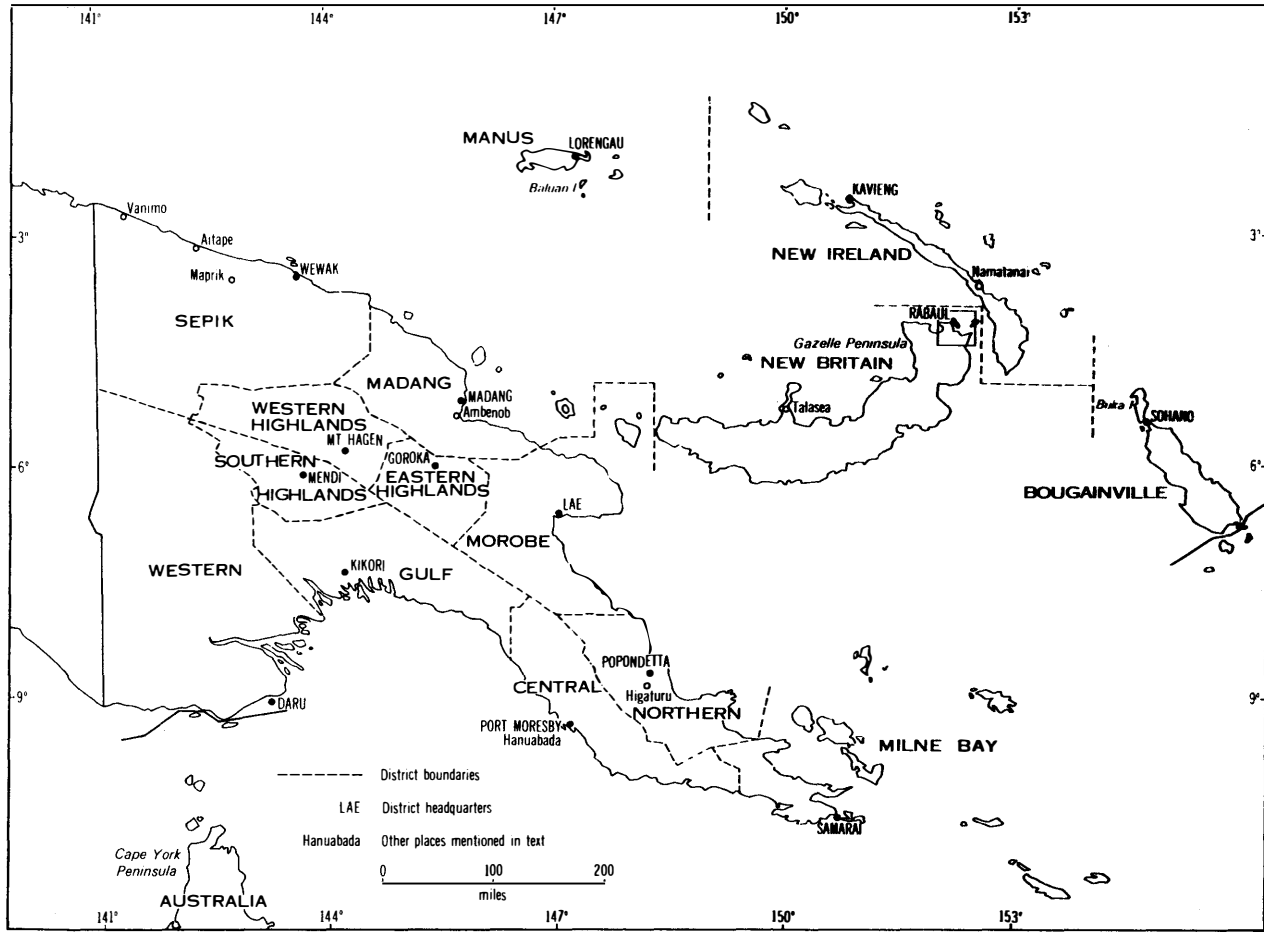
I claim no more for the result than that it may amuse my contemporaries and help the future scholar with some examples, observed at first hand, of the influence on events of intangible factors - the clash of personalities or the psychological atmosphere of a situation - which are rarely recorded in official files and are otherwise inaccessible to the professional research worker, however perceptive he may be and however untrammelled his access to the documents. Yet the story may have a more practical interest, too, for any Australian who sees a continuing significance for his own country in the politics and government of the very large island lying across this continent's northern approaches. Since 1945 advances in the guided missile technology of warfare mean that Australia's original strategic interest in Niugini has changed considerably in character. It is now less militarily oriented, and perhaps less obvious. It is, however, unlikely to wither completely. The probability that no Australian government could ever envisage turning away from Niugini with a philosophical shrug quite definitely influenced the attitudes of the early official promoters of the local government policy. They sometimes had occasion to

wonder whether their superiors, and even the Australian Government itself, had forgotten geography.

I undertook this task at the suggestion of Professor R.S. Parker of the Department of Political Science, Research School of Social Sciences, in the Australian National University. Though my feelings were mixed about the labours he thus induced, I did appreciate the facilities provided by the Department, the friendly help of its staff and the Visiting Fellowship awarded by the Research School which removed me for an interval from the conflicting temptations of a remote retirement.

D.M. Fenbury

Quinns, Western Australia
1 October 1975.



Map 1 Papua and New Guinea 1955

Chapter 1

Niugini local government 1973: expansion with decline

The Papua New Guinea annual report to the General Assembly of the United Nations for 1972-73 includes a brief historical résumé of local government development. After noting that the first councils were established in the Territory in 1950, the report continues:

By 30 June 1951, there were four Councils in New Guinea with 72 elected representatives for areas with a total estimated population of 15,000. In Papua on 30 June 1951, there was one Council with 17 Councillors for an area in which 2,500 people lived. Since then there has been significant extension of local government with particularly rapid growth in the 5 years ended 30 June 1968.

At 30 June 1973, there were 163 councils in existence, covering a population of 2,370,000 people. In addition 13 Area Authorities had been proclaimed ... (*Administration of Papua New Guinea 1 July 1972-30 June 1973*, 1974:31).

Later in the same chapter on local government, under the section heading 'Establishment of Councils', the Report mentions that five new councils were launched during the year, and that at 30 June 1973 an estimated 92 per cent of the total population of Papua New Guinea was 'embraced within the Local Government system'. But the section concludes on a somewhat paradoxical note:

The suspension of the Gazelle Council continued in force for the whole of 1972-1973. Legislation designed to enable an alternative form of local government has been enacted and it is anticipated that the Council will shortly be dissolved and a Trust set up to replace the Board of Management, which has been carrying out limited local government functions during the year (*Administration of Papua New Guinea 1 July 1972-30 June 1973*, 1974:32).

The Gazelle multi-racial council had absorbed the original five Tolai 'native local government councils', which were among the first established in 1950. Its operations were suspended of necessity when the Mataungan Association - an organization whose professed aims included destruction of the Gazelle Council - convincingly demonstrated that it had achieved majority Tolai support.

On the face of it, there would seem to be little of general significance to Niugini in the failure of one council out of 163: a failure that could be reasonably attributed to local area politics - to the interaction of circumstances as yet peculiar to the north-eastern portion of the Gazelle Peninsula and unlikely to arise in other areas.

In 1974, however, it is doubtful whether either the present Niuginian Minister for Local Government (Mr Boyamo Sali) or his Commissioner would privately support any such reassuring diagnosis. The health of all councils is occasioning concern. At Canberra, a strong-minded Niuginian lady who was formerly the secretary of the Niugini Local Government Association expressed the opinion in October 1974 that the local councils were being deliberately strangled by central government politicians. Within the same week a senior Niuginian educationalist informed me that villager interest in local government seemed to be dying (I use his term). Recent academic observers of the Niuginian scene to whom I have referred these assessments have cautiously endorsed them.

The increased difficulties that most of the older councils have experienced in collecting taxes, with concomitant decreases of villager participation in routine council activities, including elections, have been frequently reported. Until fairly recently, government officials have tended to assess these developments as incidental to the growing-up process, and even - on the model of typical Australian attitudes to local government - as indicating that the democratic temperature was normal.¹ These optimistic

¹ If there are some parallels here with the average Australian local government situation, then there are also some important differences. The apathetic Australian rate-payer has fewer illusions than his Niuginian counterpart regarding the optimum level of services he can expect from his shire or municipal council. He has been also conditioned to accept that, like death, local government taxes are inevitable.

interpretations are no longer in fashion. It seems to be now generally agreed that Niuginian villager interest in local government is waning to a level where large-scale rejections could easily occur.

The reasons adduced for progressive Niuginian apathy towards local government councils vary considerably but share some common features. Insofar as I have been able to canvass informed views, they can be summarised thus:

- (a) disillusionment regarding the local councils' powers and abilities in comparison with those of the House of Assembly and central government (regarded by many villagers as rival organisations to local government);
- (b) disillusionment with the restricted scope of functions and generally meagre achievements of a form of organisation that the villagers originally and mistakenly believed would be their own comprehensive 'machine' catering for all their developmental, welfare, judicial and legislative needs but which has steadily become remote from them. (Exponents of this theory claim that many villagers hold similar disappointed attitudes towards the House of Assembly);
- (c) gradual rejection of an alien form of organisation that cuts across traditional village separatism, traditional leadership and values, without providing adequate compensation in terms of either status or material wealth;
- (d) inadequate encouragement and guidance of councils and councillors by the *kiaps*, resulting in sub-standard performance of functions and abuses by councillors and council employees;
- (e) progressive disillusionment of veteran councillors, regarding the degree of support to be expected from the central government, including government lawyers and the courts, in such issues as the passage of council

rules, tax prosecutions and coping with dissident groups.²

It will be apparent that the first three of these explanations postulate, *inter alia*, major misconceptions by Niuginians regarding the role and status of local government. They also hint at the barely submerged chiliastic shoals that still clutter the main streams of Niuginian villager thinking, and at the struggles to strike roots that confront any techniques involving permanent changes in traditional cultural values. Ample evidence is available that Niuginian villager appraisals of causes and effects are still heavily influenced by traditional magical beliefs, and that most introduced concepts undergo subtle processes of indigenisation as village communities attempt to merge them into the pattern of the traditional culture. I suspect that the types of reaction outlined in the first three of the conclusions listed above have already occurred in many older established council areas and are in train in others. The fourth group of the reasons listed above derives from the appraisal that, over the years, the inadequacies of many of central government's officials have been at least as potent a factor in the declining vitality of Niugini local government as have the deficiencies in central government's policy approach. Supporting evidence for this assessment should emerge in subsequent chapters of this book.

No official publications of the 1950-1973 period give any indications of disenchantment with local government by those communities who had accepted it. This is scarcely surprising; neither, perhaps, is the enthusiasm for councils as 'decolonising' agencies shown in the reports of the triennial United Nations Visiting Missions. Thus the 1959 Visiting Mission described the growth of local government councils in New Guinea as 'spectacular', and stated that 'the Administering Authority should be commended for the continuing rapid expansion of local government councils, which signifies a forward step in the political advancement

² A turning point was the successful appeal (No.64 of 1962) to the Supreme Court (Smithers J.) by ToLulu of Viveran, an affluent Tolai villager, against his sentence for refusing to pay tax to the Vumadadir Council, on the ground that he spent only a minor part of the year as a resident of the council area. The significance of the judgment was that ToLulu had been 'put up' by the 'anti-council group' as a test case. The appellant was represented by the Public Solicitor.

of the people'. In a statement issued on 24 April 1960 Mr Paul Hasluck, then the Minister for Territories, noted with quiet pride that within 10 years the number of councils had increased from 4 to 35, with 931 councillors serving over 240,000 people in 1,269 villages.

Nevertheless, it was from about 1960 that the quiet malaise that was alleged by local government officers to be affecting the councils began also to be noticed in other fields of government endeavour. In the desultory debates that ensued within the Administration the rapidly increasing complexity of government was frequently adduced as the prime reason for decreasing indigenous interest. Advent of the first House of Assembly in 1964 did not reverse this process.³ By 1973 Dr J.D. Guise, as Papua New Guinea's Minister for the Interior, in common with several of his ministerial colleagues, was repeatedly emphasising the need to simplify the apparatus of government. His views partly derived from an uneasy awareness that in terms of the men and money likely to be available, an independent Niugini would have to prune, rearrange and simplify the departmental services, statutory bodies and specialised agencies that had proliferated during the 1960s.

The Minister for the Interior was also convinced that the optimum approach to finding solutions to the country's current and looming rural problems was to build on his Ministry's resources. He frequently expressed his concern at the generally deteriorating health of the local government councils, but simultaneously, if unwittingly, conveyed his impression that their importance had diminished. As Deputy Chief Minister of the central government and Minister for the Interior, Dr Guise's views of the role that local government councils should play often seemed to differ markedly from those of his Legislative Council and House Speaker days. To offset this apparent change of heart he had, with the assistance of a special ministerial assistant, Mr Moi Avei, rediscovered Batten-type community development with an SDS flavour.⁴ There had in fact been a period in the 1950s when

³ It is perhaps also symptomatic that the percentages of enrolled persons who have voted in the three House of Assembly general elections (voluntary voting) were respectively: 1964, 72; 1968, 64; 1972, 60.

⁴ Mr Avei was a Motuan Community Development Officer whom the Minister used for a time in 1973 as a private adviser. Avei was later that year made Chief of the Community Development

Niugini was invaded by romantics with distorted notions of Dr Batten's community development doctrines. At the inevitable conference that ensued at the time, John Guise had firmly supported the local government officers present. Their view was simply that the native local government councils provided for in the existing legislation were potentially the optimum form of community development for rural Niugini - provided they were encouraged to develop as multi-purpose local area instrumentalities. But community development, as the Minister for the Interior professed to see it in late 1972, was primarily a matter of employing large numbers of untrained people, including high-school drop-outs, as 'community development officers' who could bring 'grass roots progress' and 'practical help' to the villagers.

As the departmental head concerned I was unable to agree that my Minister's desired approach to village problems was either administratively or financially practicable.⁵ Following some lively exchanges he requested me to give him, for Cabinet's consideration, a 'comprehensive analysis' of the existing situation, with my department's recommendations concerning the administrative rearrangements that were needed to effect village-level community development with a more economical use of resources. The resulting document included a resume of major post-1945 developments in the Niugini native policy area, and a number of recommendations. It had no classification, and was not submitted to the Niugini Cabinet. The views it contained on the relevance of local government to the Minister's current concerns were epitomised in the following paragraph:

In the early years of 'native local government' development in Niugini it was ostensibly policy for the councils to develop definite roles in stimulating economic development, in maintaining law and order, and in functioning as junior

⁴ (continued)

division and chairman of the Pangu Pati. For Batten's views see Batten, 1948-9 and 1962. [Students for a Democratic Society was among the most radical of the American student political movements of the 1960s; it took a leading part in the 'occupation' of Columbia University in 1968.]

⁵ From July 1970 until my routine retirement in March 1973 I was Secretary of the newly created Department of Social Development and Home Affairs.

partners to various Central Government departments directly concerned with village communities. Partly because of Australian 'centralist' attitudes, partly because of inadequate performances by many district field staff, partly because of their own lack of expertise, no councils ever developed these roles to the optimum. Following the Derham report of 1961 [sic], the councils lost their law and order responsibilities. It is my strong impression that in more recent years, the councils have become largely Australian-type organisations in both their functions and philosophies. These changes in policy and emphasis may account in part for the decreasing popular appeal of councils in Niugini. I believe that for rural local government to survive there is an urgent need to re-vamp local councils' roles so that they meet Niugini's particular requirements. I also believe that the villager still needs to be taught that no better administrative device than a popularly elected area body is likely to be available, and that you can't have services without taxation.

The succeeding paragraph emphasised one of the points mentioned - one of sufficient importance to rate a chapter to itself in this book:

The recent revival of proposals to introduce a 'village courts' system into Niugini, while constituting a belated step in the right direction, is also a sad reminder of the Australian Administration's persistent refusal during the 1950s to develop such 'localised' legal institutions contemporaneously with area councils and council constables. This issue, perhaps more than any other, epitomised the centralised amateurism of the then Australian approach. In Africa, the British colonial administrators had attached maximum importance to 'native courts' and in establishing them had frequently resisted the prejudices of the British legal profession. In Niugini, where the profession, led by the Chief Justice, prevailed, the substitution of technical 'lawyers' justice' for non-technical 'elders' justice' mainly served to weaken the authority of the councils, and ultimately of the Government itself.

Chapter 2

Prologue to change

Perhaps the basic determinants of Niugini's history lie in its physical geography. Over thousands of years Niugini's formidably broken terrain, lack of readily exploitable resources, and relative isolation effectively insulated it from migrants with more complex cultures. In the absence of external political pressures Niugini's population remained 'a tangle of tiny communities' (Mair, 1948:xv) of subsistence farmers and hunters who were ignorant of metals and were split into several hundred linguistic groups. Political organisation did not extend beyond village level. Intermittent alliances and quarrels involving brief, technically inefficient war adventures - often with ritualistic overtones - were probably essential elements in each micro-government's socio-political system. It was a system that ensured group cohesion and provided the necessary outlets for communal excitement, leadership and status needs. But, in societies steeped in magical theories of causation, the micro-state system also promoted deep-rooted habits of feuding and separatism; it perpetuated conformity and stifled innovation. Group and individual attitudes to the incidental problems of daily life were apt to be conditioned by sorcery, threats and fears, by the dominating importance of kin obligations and deceased ancestors.

In 1975 there is ample evidence that tribal chauvinism at village level - and beyond - remains the biggest single obstacle to Niuginians achieving any durable sense of national unity. Neither the advent of a 'national' parliament in 1964 nor the widening spread of literacy has significantly weakened it. Ethnic barriers do seem to crumble when young Niuginians are subjected to institutional living accompanied by systematic indoctrination - as in the army and police force and, in different ways, in the training schools and universities. But recurrent incidents in all these institutions suggest that the effect may be more apparent than real.

Geography has another important historical implication. Most of Niugini lies in the wet tropics and it is accepted by botanists that the early migrants apparently brought no rice or other grains.¹ Neither did they develop indigenous staple foods with longer lasting qualities than the coconut, yam, sweet potato and sago. While food shortages were - and are - common during the dry months (or, in the highlands, after frosts), the climatic conditions generally allow some produce to be harvested throughout the year. Its perishable nature and the absence of need to provide either storable food or substantial dwellings against a cold unproductive winter have induced characteristic Niuginian mental habits and attitudes that have often perplexed and frustrated the purveyors of cultures developed in temperate latitudes.

Village administration, *kiap* style

A historical factor of importance to the promoters of the local government policy in 1950 was the habituation of Australian officials to the long-standing practice of direct rule on a single village basis. The system was highly personal. It engendered attitudes that were often not in harmony with the theory of the impartial self-effacing bureaucrat implementing declared government policies. Tribal area administrative problems varied widely. Of necessity, relatively junior officers made local decisions in contexts where generalised policy dicta were inadequate guide-lines. Differences of viewpoint among successive outstation officers regarding the best means of attaining Administration policy objectives were inevitable. They were often exacerbated by personal jealousies and prejudices. These factors and propensities did not vanish with the advent of the local government policy.

As public servants, field officers of the Department of District Services and Native Affairs,² known as *kiaps*, were subject to the provisions of the Public Service Ordinance

¹There has been much speculation, but as yet no clarification, regarding the possible uses made by long-forgotten Niugini migrants of the pestles and mortars that have been found on both the Niugini mainland and its adjacent islands. No 'wild' descendants of cultivated grains occur.

²The Department was redesignated 'Native Affairs' in 1955, and 'District Administration' in 1964.

and Regulations of the Niugini Administration. They did not sign time books but were required to keep diaries. They were endowed with police powers. Until 1958 they were deemed to be on duty twenty-four hours of the day and were not eligible for overtime payments. In the small townships that comprised most district headquarters the way of life of the senior district *kiaps* generally conformed to tropical bureaucratic norms. On the small outstations over the ranges or among the islands, the life style and attitudes of the relatively junior *kiaps* often varied widely from the cautious work habits and a-political philosophies commonly ascribed to Australian public servants.

In his office, the bush *kiap* grappled with the demands and parsimony of Treasury, Government Stores, and his own district headquarters - or neglected these formidable but distant claimants on his time while he heard court cases or tried to appease a disgruntled *luluai*, missionary or the local trader. Depending on his area's degree of contact the *kiap* could be frequently involved - not always amicably - with the housing and transport problems of district representatives of other departments and the reactions of local communities to their efforts. It was usually the bush *kiap's* responsibility to maintain radio contact with district headquarters, keep a small airfield open, and run a police detachment, a prison, a post office, a vehicle or two, and perhaps a work boat.

On patrol, the bush *kiap's* physical survival could depend on his physical fitness, his wariness, the efficiency of his police NCO, or the condition of his boots. As the situation required, he might need to act as magistrate, arbitrator, policeman, political mentor, hygiene inspector, medical assistant, agricultural adviser, census taker, map maker or road foreman. His activities in any of these fields could be governed by flooded rivers, inter-village brawls, an outbreak of dysentery or an accident to his last container of trade salt. With his superior officer 50 miles distant, a *kiap's* continuing zeal to be all things to all men to the best of his ability depended on retaining his belief in his mission as agent of change, on his temperament and health, but perhaps most importantly on whether he liked Niuginian villagers.

A junior *kiap's* career prospects depended less on the soundness of his assessments of local political situations and on what he achieved in the villages than on his prudence

in reporting and in avoiding controversy. His departmental bosses rarely applauded pessimistic evaluations of the progress of culture contact. Neither did they encourage him to be explicit regarding the technical illegalities that inevitably occurred in the practice of 'native administration' in remote localities. Thus a junior *kiap* camping in a recently contacted hamlet far over the ranges might learn that in a hut adjacent to his camp a woman was dying of stab wounds received during an argument with her co-wife. After enquiry into the matter the *kiap* might conclude that as sending the accused woman and witnesses into the distant station was not practicable, the situation would be best resolved by awarding compensation in food to the victim's relatives, village sanitation chores to the culprit, and a stern warning to everybody. He does these things and records them in the village book. He believes that his actions were administratively sensible and locally acceptable. He continues his patrol, leaving an apparently tranquil hamlet. But if the *kiap* subsequently wrote up this incident in his patrol report in sufficient detail to inspire a nervous superior to refer it to the lawyers, or a missionary complained about it, there would ensue an expensive investigation of whether a member of the field constabulary connived at a serious crime. Then, much later, an unhappy junior *kiap* would appreciate that even over the ranges it was too risky to short circuit the cumbersome machinery of the criminal code.³

The Niuginian outstation *kiap*'s way of life fostered self-reliance, initiative, dislike of headquarters and dogmatism. Individual reactions varied widely. Cultural isolation tended to induce parochialism, sometimes led to deep reading or deep drinking, and sometimes accentuated eccentricities. The authoritarianism inherent in the direct rule system of single village administration through appointed officials was often accompanied by sternly protective paternalism or emotional identification with local issues, occasionally by cynical detachment. It did not predispose many of its *kiap* practitioners to favour the

³ Neither were senior officers immune to these occupational hazards. In 1947 J.L. Taylor, then District Officer at Goroka, certified that no inquest was necessary following a patrol officer's report of an affray in an uncontrolled part of South Chimbu. Taylor advised his departmental headquarters fully - and the Crown Law Officer tried to indict him.

concept of freely elected area councils endowed with statutory powers. Indeed, the illiterate leaders of the village micro-governments - the people notoriously steeped in traditions of hostile separatism - often seemed better able to appreciate the functional need for organisation over a wider area than their white masters.

Meanwhile, to most 'controlled' villagers of the pre-council era the multi-purpose *kiap*, enigmatic, autocratic, sometimes generous, and often ignorant of what every Niuginian knew, personified the distant, powerful, mysterious *Gavman* of the whiteman. It was a situation that could, and did, change rapidly as acculturation gathered momentum in the 1950s.

Pre-war policies in the two Niuginis

A further factor was the mutual suspicion - mounting on occasions to active enmity - between both Browns and Whites from the formerly separate territories, and between 'new order' whites and the more conservative expatriates. In this latter phenomenon neither length of residence nor occupation was necessarily a determinant. The differences between opposed Australian 'territorial' attitudes (including those of the religious missions) were blurred - or were silenced - as political evolution proceeded. Repeated incidents have indicated that the indigenous bigotries are more durable. Their exponents are in Niugini to stay. One consequence of the 1884 partition of Niugini between Germany and Great Britain (later Australia) was that from 1884 to 1942 each territory developed along its own lines and acquired traditions that in 1975 still potently influence group attitudes.⁴

The pattern of village headman administration established by the Germans was based on the traditional form of single village government. Initially there were no options. As developed by the German Governor Hahl, however, the village headman (*luluai*) system was an embryonic form of indirect rule. The *luluais* had authority to collect taxes, retaining 10 per cent of collections in lieu of salary, and were empowered to settle minor disputes. Between December 1920, when the League of Nations granted Australia a 'C' class

⁴An amalgamation of the two territories was considered and rejected in 1919, and again in 1934 and 1939. See Mair, 1970:4.

mandate over the former German colony, and 1942, when civil administration ceased as a result of the Japanese invasion, the German administrative system underwent only minor modifications but the element of indirect rule was eliminated. The taxation powers and remuneration of the *luluais* and their legal authority to administer justice were abolished.⁵ Under the Germans 'New Guinea' had received an annual subsidy. In 1919 Sir Joseph Cook, then Australian Minister for the Navy, declared that Australia's new territory would have to pay its own way. The Australian Administration was largely geared to the political and economic needs to keep private enterprise supplied with native labour. Between 1927 and the Japanese invasion in 1942 the Mandated New Guinea Treasury depended increasingly for its revenue on the royalties and customs dues resulting from the gold industry. The Administration tried to develop reasonably comprehensive health services; it left education largely in the hands of the missions. It did not encourage indigenous economic production by villagers. It established non-statutory village councils (*kivungs*) in Matupit in 1937, and later in the Nodup group and several other accessible villages in the Rabaul area. From the villager viewpoint the *kivung's* most important (if technically illegal) function was to hear local disputes. Its verdicts were usually endorsed by the local field officer (*kiap*) on a brief visit.⁶

Attempts to administer the British Crown colony of Papua commenced during the regime of the redoubtable Sir William MacGregor, 1888-1898. He established an administrative framework that endured, with only minor modifications, until the cessation of Papuan civil administration in 1942. Lacking New Guinea's gold, and with relatively little accessible fertile land to attract outside capital, the Australian colony (from 1906) of Papua got by with little Australian government interference, and a grant-in-aid that never exceeded £50,000 per year. The system of village administration remained based on MacGregor's village constables. In 1923 non-statutory village councillors were

⁵In 1924 Col. J. Ainsworth reported that *luluais*, with the tacit consent of Australian district officials, were still 'hearing courts' (Ainsworth, 1924).

⁶During the early 1950s, various old Tolais (like Anton of Matupit who had sailed on German ships before 1914) were fond of telling me that 'my' councils-without-court-powers were obviously inferior to the pre-war arrangements.

introduced as advisers to Australian field officers. In practice they either assisted or took the place of their village constables. There were no councils. There were some rather ineffectual attempts to promote indigenous economic production, mainly through communal village coconut plantations and a rice scheme.

The Papuan system of administration fostered during the long gubernatorial regime of Sir Hubert Murray (1907-1940) has been described by Lord Hailey as 'a well-regulated and benevolent type of police rule' (Mair, 1948:xvi, Introduction). The government of the Mandated Territory of New Guinea was sometimes accused of being more authoritarian than Papua's, and less benevolent.⁷ The Mandate Whites regarded Papua as an impoverished sleepy hollow. In Port Moresby the Morobe gold fields and the Gazelle Peninsula of New Britain were considered to be unpleasantly bustling places where native interests had been entirely subordinated to the demands of private enterprise.

The author's apprenticeship

In 1937 I joined three other newly appointed cadet patrol officers in the Mandated Territory capital town of Rabaul, which was still bedraggled and dusty from the May 1937 volcanic eruptions.⁸ For about six weeks we shared a fine new bungalow while undergoing indoctrination at various Administration institutions, including the Lands, Treasury and Customs departments, the Police Training depot, Government Stores, Post Office and Native Hospital. Our training in the art of administering the indigenous community comprised a few short trips to plantations and villages with members of the Rabaul District Office staff. We also attended some court cases and absorbed the droll stories of our amiable departmental chief, E.W.P. Chinnery, who had been once in the Papuan service. Besides being Director of District Services and Native Affairs, he doubled as Government Anthropologist.

⁷ But in 1932, when Brigadier-General Wisdom retired after eleven years' service as Administrator, the *Sydney Morning Herald* was critical of his 'pro-native' reputation.

⁸ The cadet system was the only significant recommendation of the 1924 Ainsworth Report that was adopted by the Australian Government. Mair (1970:35) erroneously states that the minimum academic standard for entry was Intermediate Certificate. It was Matriculation.

During these first weeks in Rabaul we new-comers were often discreetly amused to note that the philosophy of race relations vigorously expounded by some of our Australian mentors contrasted oddly with our own relationships with the four casually-employed Niuginian domestics who had 'adopted' us. These men were town-wise migrants from other districts. They gave us our first lessons in Melanesian pidgin, fed themselves partly at our expense, advised us often, and occasionally gave us the brown workers' views on race relations. Their cash wage of six shillings (60¢) a week, without official rations, was four times that paid to indentured plantation labourers, who were, however, also fed and housed. As cadet patrol officers we were paid £300 per year with a £3 boot allowance and a monthly entitlement of quinine.

After this Rabaul sojourn I worked in New Britain, mainly in the large Talasea sub-district, until December 1939.⁹ Our applications for war service leave were rejected. During the first two academic terms of 1940 my group attended the Commonwealth Government-subsidised course at Sydney University (in anthropology, criminal law, economic geography and mapping, and tropical medicine) that was part of the cadet system. From Drs Hogbin and Andrews we learned a little of other systems of colonial rule, including the British approach in the Solomon Islands. I had been officially advised that I would be posted to Madang district, but was diverted to the Aitape sub-district of the Sepik district, because Patrol Officer Elliott, the junior field officer there, had been killed by the Mai-Mai people, south of the Torricelli range. Mainly through the good offices of the Aitape A.D.O., Mr J.L. Taylor, I spent most of my time in that large sub-district working in the fairly densely populated inland tribal areas. With other junior officers I was granted war service leave in September 1941, returned to Australia at my own expense and enlisted in Artillery. Some months after the outbreak of the Pacific War those of us who had been Niugini public servants were transferred into the newly formed Australian New Guinea Administrative Unit (ANGAU). I returned to Niugini in late 1942, was posted

⁹The District Officer of New Britain during most of this period was W.B. Ball, O.B.E., who in retrospect rates as an exceptionally perceptive, able and considerate district administrator. He was also one of the few generalist officials who had learnt the Tolai language. Ball was an Englishman.

to the ANGAU operations branch, and served in various localities with several different formations until the end of the Pacific war.

Shortly after the cease-fire I was ordered to report to Army Headquarters, Melbourne, where I learnt from Colonel A. Conlon of the Army Directorate of Research and Civil Affairs that I was being sent on an assignment that included attachment to the Government of Tanganyika and secondment to the British Colonial Office, London.¹⁰ Before sailing for Africa I spent a few weeks at Duntroon, Canberra, where most of the Directorate staff and the 'Land Headquarters School of Civil Affairs' were then located. The school's Chief Instructor was Colonel J.K. Murray, a former Professor of Agriculture. His staff included Lieut-Colonels Camilla Wedgwood and H.I. Hogbin, Dr Lucy Mair and several other social scientists interested in influencing events in post-war Niugini.

I returned to Australia in April 1947 and after demobilisation and a short leave was 'requested' by Col. Murray, who had been appointed Administrator of Niugini in late 1945, to assist the depleted staff of the former Army Civil Affairs School (re-named, after demobilisation, the 'Australian School of Pacific Administration' [ASOPA]), which was located at Mosman, N.S.W.

The school was at that time providing induction and qualifying courses for aspiring cadet patrol officers, short refresher courses for senior Niugini field staff, and a two-year course, at tertiary level, for selected patrol officers who had entered the service during the war. I lectured in 'Colonial' and 'Practical' Administration. The opportunities for reading and for re-checking African observations in ASOPA's excellent library, plus incessant tutorial discussions, helped clarify ideas a number of us had developed regarding the future of 'Native Administration' in post-war Niugini. During this ASOPA interlude I spent some months in Niugini - partly to participate in meetings of an embryonic Welfare Committee, partly to report on the workings of the War Damage Compensation scheme.

¹⁰ Captain C.J. Millar, who was also a Niugini patrol officer, had been sent to Nigeria some months previously. He was the first Registrar of Co-operatives in Niugini. He resigned in 1952.

The post-war scene - an unpromising picture

As early as September 1945 a 'new deal' for Niugini had been announced by the Australian Labor Party Minister for External Territories, E.J. Ward, during the second reading of the Bill establishing a provisional civil administration. In 1946 the Australian grant-in-aid to Niugini was £2.3 million plus an estimated £2 million set aside for 'native war damage compensation'.¹¹ This was a far cry from Sir William MacGregor's 1892 lament that with another £2,000 he could have opened up four additional divisions. But in post-war 1946, and for some years after, lack of funds was not the primary obstacle to Niugini's progress.¹² Realistic action plans, materials of all kinds and executive skills remained scarce commodities.

These difficulties were intensified by some unpublicised aftermaths of the war. At Canberra, the Department of External Territories, which had been part of the Prime Minister's Department until 1941, was manned by ageing clerks unfitted for planning brave new worlds and prone to equate Niugini field staff responsibilities to Australian public service clerical jobs. During 1944-45 men like Halligan and Brack had been overshadowed, and often ignored, by the academic advisers in the Army Directorate of Research who had influenced the thinking of the Minister, E.J. Ward, on future Niugini policy. Colonel Conlon was also reputed to be a tough operator. In 1946 the Department of External Territories was freed from these annoyances. It recovered its advisory role and assumed control of the Civil Affairs School, but relations between the Department and School staff remained cool. It should be noted, however, that the pressures which in 1955 resulted in the School's tertiary level 'Long Course' for patrol officers being reduced from two years to one were not initiated by External Territories,

¹¹ In an unreferenced memorandum to Canberra, 'Plans for Native Welfare, Social Development and Economic Development', dated 22 August 1947, Colonel J.K. Murray stated that 'the physical damage done to the Territory by the War has been assessed at £17,000,000'.

¹² By 1970 the Commonwealth grant-in-aid had risen to some £48 million or 55 per cent of the total anticipated revenue of £88 million. Internal revenue obviously includes a substantial 'recycling' of Commonwealth funds. For MacGregor's statement, see Mair, 1970:29.

but by the *kiaps*' own Director, A.A. Roberts. In its handling of Niugini affairs the Department's ill-informed arrogance and its unimaginative approach to novel policy lines did little to energize Port Moresby's jaded senior officers with 'new order' fervour.¹³

This assessment is supported by the impressions I recorded towards the end of my five-month visit to Niugini during 1947-48. A note dated January 1948 reads:

Numerous conversations with numerous (Moresby) Big Shots leave no illusions re the supply problems ... and they obviously are up against a wall of ignorance and lethargy at Canberra ... but I'm still doubtful if they've got what it takes to do methodical and detailed planning ... There's no co-ordinating body and there's little realism.¹⁴

Earlier notes made on this trip depicted a gloomy domestic situation in the capital. Thus, on 14 October 1947: 'Moresby seems to be stagnating. The housing situation is very bad, the power supply erratic, the water mostly off ... around departmental headquarters there is an atmosphere of cynicism and despondency ... it could be partly due to the quality of the freezer meat'. About a month later, at Madang on 11 November 1947, I recorded that 'the further one gets from Moresby, the more signs of vitality and purposefulness ... There are some signs of progress at district level, resulting from individual initiatives rather than policy directions'. The same entries also recorded that 'thus far the two main post-war activities have been disposals of war materials and compensation to Natives for war damage. Both activities have peculiar difficulties and both seem to have been handled badly'.

¹³One early post-war example of Canberra's determination to supply Australian answers to Niugini problems was the Co-operative Societies Ordinance, which was based on N.S.W. legislation. Its provisions pre-supposed a literate co-operative society membership. It had to be complemented with a simpler enactment (the Native Economic Development Ordinance, 1951) that was better geared to Niugini realities.

¹⁴In a letter to me dated 13 August 1947 the chairman of the 'Native Welfare Committee' (Dr J.T. Gunther) had stated: 'We are unable to arrive at any concrete conclusions as to just what is required of us'.

A year later the general administrative situation in Niugini appeared no brighter. In January 1949, in a lengthy personal letter to G.B. Cartland (a Colonial Office executive and former district commissioner who had been keeping me in touch with British African colonial developments)¹⁵ I complained of the 'difficulty being experienced in obtaining the right sort of staff, particularly technical officers, for New Guinea', while simultaneously there was a 'large build-up of Australians engaged in "minor" routine clerical-type duties which in a more advanced colony would be carried out by locals'. The letter also commented on 'the myth that the country can be developed without large capital expenditure on communications ...' and disparaged the

apparent belief that all New Guinea's problems will be solved by the ultimate emergence of adequate numbers of trained officers. Obviously a trained staff is necessary, but it is also vital that comprehensive and detailed plans for future economic and political development be formulated ... The Commonwealth Government is contributing [funds] to New Guinea at a rate more than comparable to the average C.D. & W. [Colonial Development and Welfare] grant but we have nothing approximating to the 10 year plans of the British colonies.

This letter also expressed a fear that 'neither in Port Moresby nor at External Territories Department in Canberra are there men at the top with the skill and vision to do the job required' and stated that the fact that 'more than three years after the end of the war a Provisional Civil Administration is still functioning' was symptomatic. The overall Niugini situation was described in the following paragraphs:

The terms of the Federal Act setting up the Provisional Administration leave the Niugini Administrator with little or no autonomy in policy matters; he has no Legislative Council and is, incidentally, an ex-Professor of Agriculture with no previous experience in colonial Administration. The Minister for External Territories (Ward) has no particular interest in New Guinea affairs and for the

¹⁵ Later (as Sir George Cartland) Vice-Chancellor of the University of Tasmania.

past year has been engrossed in his personal political fortunes. (He has recently relinquished his portfolio pending a Royal Commission of enquiry into a New Guinea timber lease scandal.) As a result all major policy decisions are in the hands of the permanent Secretary for External Territories Department who, like his staff, is simply an old Commonwealth Public Service clerical man.

I have risked boring you with these sordid details in order to give you an idea of what we are up against. The New Guinea Administrative service contains some good men, but too many of them have long since been conditioned to a policy pattern which starts and finishes with maintaining law and order, coping with routine papers, distributing supplies to out-posts and handling such elementary social services as the supply/transport/technical staff situation permits. Their outlook is essentially parochial; the great wealth of British colonial experience remains a closed book to most of them. So does Hailey's 'African Survey'. Aspects of native economic and political advancement which in British colonies are regarded as basic and elementary, are in New Guinea liable to be regarded as dangerous innovations ...

Meantime normal evolutionary processes are at work on the native population. In certain economically favoured coastal areas, the people are advancing rapidly, if in a dangerously haphazard way. Due to the War itself, to war damage compensation and to the currently high prices paid for copra, garden produce etc., many coast-dwellers are, by average East African standards, quite well-to-do. In other areas that lacked these advantages, native society is stagnating in a decaying tribalism¹⁶ but is beginning to

¹⁶An unfortunate term. The intention was to indicate that the ancient and brittle roots of pre-contact Niugini society were highly vulnerable to erosion. But in so far as a Niuginian still derives his primary identity from, and owes his primary loyalty to, his extended family, clan and linguistic group, tribalism is far from decaying. In 1975 it still represents certainty in a world of bewildering political and economic changes.

add up the score for itself in its own untutored way. It is a picture with depressing potentialities, and a time factor is operating.

My personal desire is to start work on native political development, which at present is still merely an entry in the New Order book. A legal basis for more advanced organizations than the old village officials system was provided in the Village Courts and Village Councils Ordinances drafted eighteen months ago and still, presumably, mouldering in some External Territories pigeon-hole. No doubt they will be disinterred one day.¹⁷

The fact that this lengthy extract was written in January 1949, as an assessment for a professional colonial administrator, provides some justification for its reproduction here. Of more importance is the certainty that its astringent opinions were influenced by a consensus among the many A.D.O.-level officers who came down from Niugini during 1948 to attend ASOPA refresher courses. The carpings partly reflected the impatience of junior but experienced field officers with both their Canberra and their Niugini bosses. In the mellowing light of twenty-five years later the attacks still seem to have been uncomfortably on target.

The Acting Director of the Department of District Services and Native Affairs, J.H. Jones, apparently also had reservations regarding the ability of his depleted staff of experienced field officers to cope with unfamiliar duties. In June 1949 he sent me a note quoting some extracts from recommendations made to the Administrator by the Port Moresby 'Interdepartmental Committee on Native Development and Welfare'.¹⁸ These showed that the Committee (including, I think, the Director himself) considered that District Officers (redesignated 'District Commissioners' in 1951) were 'already more than fully occupied' and that the introduction of

¹⁷ I believe that some information on this draft legislation was obtained and passed on to me by Mr J.R. (later Sir John) Kerr who was ASOPA Principal during part of 1946-48.

¹⁸ The separate 1947 'Native Welfare', 'Social Development' and 'Finance' Committees apparently had been amalgamated. I do not recall being advised of this.

'village councils' and 'village courts' should be handled 'in the preliminary stages' by 'specialised sections' (personal letter from J.H. Jones dated June 1949). (Rumours regarding the imminence of these institutions had been circulating amongst field staff officers since Dr H.I. Hogbin's 1946 visit to Niugini, and publication of his *Oceania* article 'Local Government for New Guinea' (Hogbin, 1946). The Director of District Services had also issued a vaguely worded circular on councils and courts in March 1947.)

In a separate note Jones advised me 'unofficially' that he had recommended that I should resume duty in Niugini by the end of the year as I would 'probably be given responsibility' for the initial establishment and supervision of councils. He said that 'new legislation' was being prepared, but gave no details. At that time the Niugini Administration had no legislative drafting section. Some of the gossip regarding the approaches Canberra lawyers were making to legislation for Niugini was quite frightening. My careful enquiries to the Director regarding the general lines of the proposed legislation covering native courts and councils remained unanswered.

On 1st July 1949 the Papua and New Guinea Act, 1949, which had been passed by the Australian Parliament in March 1949, came into force. It included provision for 'Native Village Councils', and for 'Courts and tribunals, including native village courts and other tribunals in which natives may act as adjudicating officers or assessors ...' (sec.63). I finished the ASOPA lecturing assignment, sent my family to New Zealand for a few months, and shipped myself and chattels to Port Moresby, arriving there on 17 December 1949. After a few days in a hostel known as 'Belsen' I gratefully accepted the offer of my old colleague, R.H. Boyan, to share his two-bedroom paper house at Konedobu.

Chapter 3

Implementing the new policy: action and reaction, 1949-51

In this and the following chapter my primary purpose is to set down the sequence of major events during the first few years of the local government policy's operation. They were controversial years. In the early post-war period it was to be expected that the attitudes of many white Niugini residents, both within and outside the Administration, would be less than enthusiastic towards developments that they vaguely interpreted as yet another manifestation of a United Nations (Organisation) plot against themselves. It was inevitable that many missionaries would regard the advent of secular elected councils endowed with taxing powers as potential threats to mission finances and mission temporal authority. It was less easy to anticipate that the Australian Government itself would remain unwilling to face up to the logical implications of its own acts. Despite the tight controls written into the native village councils legislation, it spelt out an irreversible shift in Niugini native policy. There was official reluctance in both Canberra and Port Moresby to recognise this fact. One consequence was a general failure to appreciate that implementing local government policy called for widespread changes in legislation governing the work of technical departments, and changes in the attitudes and activities of all officers concerned with council villagers.

The interaction of these factors produced disputes. They ranged from discreetly filed disagreements between departments and officials to highly publicised dissensions involving, on occasions, the leaders of indigenous groups, officials, missionaries, and expatriate politicians. It is probable that the ways in which the assorted policy issues underlying these controversies were ultimately resolved - or left in abeyance - during the decade 1950-1960 have potently influenced various aspects of the overall Niugini situation of post-colonial 1975. My immediate task, however, is less concerned with trying to evaluate than with

recording - necessarily from a participant's subjective viewpoint - the sequence of events in the early phases of native local government development. Important associated issues such as 'native courts' and 'taxation', while incidentally mentioned here, will be treated in more detail in subsequent chapters.

The initial council legislation

Within a few days of resuming duty at the headquarters of the Department of District Services and Native Affairs (DSNA) on 17 December 1949 I had three surprises. The first was being handed an advance copy of a Native Village Councils Ordinance that had been already approved. Much of its content had been borrowed from the old Tanganyika Native Authorities Ordinance.¹ A second, and less pleasant, surprise was the discovery that, for all the drafting work alleged to have been done at Canberra in 1947, and despite the brave words of the Australian Government's 1948-49 Report to the General Assembly of the United Nations, no native courts ordinance was ready, and the native courts policy itself was still under dispute.² My third surprise was a sort of minus personal Christmas gift. The Public Service Commission, on advice from the Department of External Territories, ruled that my teaching assignment at ASOPA was 'not service within the Administration' and hence had not entitled me to annual increments. The net result was that my annual salary as an Acting Assistant District Officer was £72 lower than that of my contemporaries.

¹ Despite District Services rumours arising from my 1946 Tanganyika experience, I was not involved in the drafting of this ordinance and had no previous knowledge of its East African origins. A.M. Healy (1962:280fn.) states that on 25 October 1948 DDSNA advised the Department of External Territories (DET) that Tanganyika's old Native Authorities Ordinance had been used as a model. The Niugini ordinance also owed a little to New South Wales local government legislation.

² The 1948-49 New Guinea *Annual Report* stated (p.24) that a Village Courts Ordinance was 'in the course of preparation which when promulgated will give existing tribunals the necessary statutory authority to enable them to become a part of and supplementary to the existing judicial system of the Territory'.

From my viewpoint, as a relatively junior official under orders to promote a radical change in native policy, the obscurity regarding the native courts system was an unexpected complication. British African experience had suggested that in Niugini the judiciary and legal profession could not be expected to regard low-level laymen's courts with any enthusiasm. Rumours of strong opposition (by the Chief Justice) to the native courts concept had reached ASOPA, but there had not been any suggestion that the policy would be jettisoned. One of the conclusions reached from many hours of leisurely discussion at ASOPA with anthropologists such as H. Ian Hogbin and Kenneth E. Read and different groups of refresher course officers was that, in the early stages, the native court aspects of 'native local government' would be of basic importance in stimulating villager enthusiasm. Even those refresher course officers who did not favour giving court powers to village headmen at all agreed that, having regard both to Niugini's administrative history and to Niuginian psychology, the endowment of local area leaders with some statutory judicial authority would be regarded by the villagers as signifying a transfer of real power. The consensus view, to which I subscribed, was that in the Niugini context some decentralisation of the judicial function was one of the prerequisites for the long term political success of the multi-purpose area local government that we believed was needed. We also concluded that the members of each area native court should comprise a panel of local 'big men', appointed by central government following formal recommendations by the local council. Naively, we also hoped that this arrangement might mollify the lawyers.

Following upon these conclusions there had been much discussion in ASOPA tutorials regarding the feasibility of initially separating the judicial and executive arms of the future Niugini local government system. To experienced field officers some of the incidental issues were less clear-cut than academic writers have indicated.³ Reinforcing the obvious objections to elected councillors being *ex officio* magistrates were the arguments against building up institutions that would probably require dismantling as education spread. In this connection the ASOPA library and the *Journal of African Administration* yielded valuable information on evolutionary problems that had already occurred in the British

³L.P. Mair (1970:77) incorrectly implies that I was opposed to separation of the judicial and executive arms at council area level.

African native authority system which of necessity had been built around hereditary chiefs who traditionally wielded executive and judicial powers. On the other hand, neither the functions of the traditional Niugini village gerontocracies nor those of the multi-purpose *kiap* system could be regarded as favourable factors in any early 'separation of powers' approach to the villagers.

From the Administration's viewpoint it would be functionally and politically advantageous if respected elders could be appointed to native court benches by central government on the basis of council recommendations, while younger men, presumably more receptive to new ideas, remained content to seek status as councillors. On the probabilities of Niugini village politics, including the sectarian and leadership rivalries that would be stimulated by area organisations, a harmony of interests along these lines was not likely to eventuate. But new forms of pressures, tactics and intrigue could be expected. Thus it could be confidently predicted that local missionaries would oppose the appointment of polygamous leaders as lay magistrates, and wily local entrepreneurs would push for their own nominees. There was also a reasonable chance that in some areas, irrespective of how much preliminary work was done, the separation of judicial and executive powers would remain unacceptable to the villagers.

A further interesting possibility - regarded by some officers as a probability - was that, in typically Niuginian status-seeking fashion, court members and councillors might regard themselves as rival authorities, and actively compete for power and prestige. Administrative complications arising from developments of this character could be exacerbated by the practical necessity for both the local court bench and the local council to be served by the same tiny reservoir of clerical skills that, we hoped, would be available in the area council office.

Much would depend on the efficiency, integrity and continuity of these court/council clerks. Few of the villager 'big men' to whom they would be responsible would be able to check the accuracy of the clerks' written records. In our ASOPA discussions even the optimists agreed that some abuses of authority by village court/council clerical staff could be expected. It is indicative of our inexperience - and of the scarcity of indigenous skills in Niugini during the late 1940s - that the problems involved in retaining the services

of suitable council clerks seemed more formidable than those concerned with effective supervision of their work. One point was clear: to keep their clerks, councils would have to pay them at prevailing government rates. This was a factor that immediately impugned the validity of the small 'village council' concept.

There was common agreement that court members would also have to be paid. Opinions varied regarding the relative merits and risks of paying sitting fees or fixed salaries. It also emerged that the payment of court members and the cost of servicing the courts constituted additional economic reasons for village courts, like village councils, encompassing groups of villages. A major query that hovered over all these theoretical considerations of the 1948-49 era was whether separatist Niugini hamlet communities could be persuaded to acknowledge the suzerainty of non-traditional multi-village institutions.

Study of the Native Village Councils Ordinance (No.11 of 1949) confirmed my initial impression that, despite some flaws, it was a sensible, brief (22 clauses only) enabling enactment that would permit an 'area' approach to local government. It left detailed arrangements to be spelt out in regulations. The inclusion of 'village' in its title was unfortunate, but followed inevitably from the wording of the 1949 Papua and New Guinea Act. Retention in the ordinance of an 'African' clause like 6(2), which stated that a council 'shall have such powers and authority as are conferred upon it by native custom ...', obviously had little significance in the Niugini context, but appeared harmless. The provision of a maximum penalty of a five pounds fine or a month's imprisonment, or both, for any of the listed offences against a council was seriously inconsistent with the maximum penalties of two pounds fine and six months' imprisonment laid down in the existing Native Administration Regulations (NAR). On the credit side, it seemed that the surprising inclusion of clause 11(a), which enabled a council 'subject to the approval of the District Officer' to 'organize, finance or engage in any business or enterprise', should facilitate trying to develop local government area organisations as multi-purpose development/welfare mechanisms.⁴

⁴The subsequent Regulations (mainly my drafting) carefully omitted any reference to section 11(a). Firstly, it seemed wise not to invite attention to what might have been an inadvertent insertion. Secondly, the effects of any

This un-Australian concept derived more from some United Kingdom local government practices than from African precedents.

Clause 11(a) did, however, reflect one of several lessons regarding the mental processes and aspirations of the Niugini villager that I, in common with other young *kiaps*, thought I had learnt during close war-time associations with indigenous communities. (During 1943-45 our mutual experiences and conversations had often differed widely from those allegedly characterising normal *kiap-kanaka* relationships.) One lesson often re-hashed in ASOPA tutorials was that after a generation of culture contact most Niugini villagers - including the hamlet's gerontocratic management - seemed to appreciate that their future prosperity, their future share of 'cargo', meant importing 'new things' like schools and cash crops. They often asserted that implementing these new ideas would need the efforts of young educated men and seemed to understand that acquiring new skills would take time.⁵ But the concept that overall progress of the group could be achieved through different agencies harmoniously co-operating in controlling different activities within the group was derided as being unrealistic - at least for some time to come. 'You know us. Very soon we would be fighting.' To the Niuginian villagers, comprehensive progress connoted a comprehensive authority. Even in those group discussions where progress (in Melanesian pidgin *gutpela sindaun*) clearly meant acquiring 'cargo' in some supernatural way, the 'comprehensive authority' still seemed to be regarded as the most promising medium.

The 1949 Native Village Councils Ordinance placed control of virtually all council activities under the District Officer concerned. Some observers have inferred that this arrangement was designed to ensure that the councils would remain docile administrative instrumentalities without any real power or scope for political turbulence.⁶ I believed

⁴ (continued)

regulations would be restrictive. The economic development possibilities of Niugini local government had still to be explored.

⁵ Nevertheless, areas of the Sepik district where I first heard these sentiments forcibly expressed have since been heavily infected with the Yaliwan cult.

⁶ Thus Rowley: 'For even where the Local Government Council has been established ... the *kiap* is still the multi-powered boss' (1965:76).

then - as I do now - that *any* group socio-economic activity will inevitably sprout the seeds of political activity. But as an experienced Niugini *kiap* I was happy enough with these provisions for other reasons. Firstly, I calculated that the repeated references in the ordinance to the District Officer's controlling authority might increase the pressures on indifferent or antipathetic field officers to take an interest in councils, and had in any case provided the openings for such responsibilities to be spelt out in the regulations. Secondly, as African observations had indicated, it seemed probable that for some years to come councils would only be as effective as their supervising *kiaps* made them. Thirdly, the high degree of central government control written into the ordinance might lessen the antagonism of whites, both within and outside the Administration, who were equating 'local government' with 'self-government' and were already attacking the policy as a foolishly premature socialist gesture.

I had expected that promulgation of the new councils ordinance should result in at least one inter-departmental conference, but was not advised of any. At District Services headquarters I was told that neither the *kiaps* nor technical officers were as yet showing interest in the matter.

During the second half of December 1949 I had several discussions on the new policy with J.H. Jones, who had temporarily relinquished his District Services and Native Affairs departmental head duties to concentrate on planning. He informed me that he had 'battled hard' to get the councils ordinance and the specialist 'Native Authorities Section' approved. I pointed out that the Section's title was not very appropriate, as the term 'Native Authority' was usually related to a British African institution that was based on government recognition of the judicial and executive powers traditionally exercised by hereditary chiefs. Jones replied that, as he expected the councils to be endowed with court powers within the near future, the title should stand. Our discussions ranged over such issues as the 'area council' approach and the consequent need to eliminate the term 'village' from the title of the ordinance; the leniency of the maximum imprisonment penalty compared to that of the Native Administration Regulations; the initial financing of councils (Jones expressed an optimistic view on this matter); the drafting of regulations to amplify the ordinance; the possible use of the Tolai area as a major testing ground for the new policy; and the future of existing village officials

in those areas where councils were proclaimed.

When Jones cautiously indicated that he did not think general native taxation was imminent, I asked whether the official policy on council establishment could remain one of strictly voluntary villager participation - as he had previously stated. I stressed that, while unwilling villagers could not be forced to operate village councils, there was scope for approaches of the 'Now this is what we are going to do' type. Jones plumped solidly for maintenance of the voluntary participation approach.⁷ He then complicated the issue by remarking that decisions on when and where councils were to be established would have to remain the prerogatives of District Officers.

Elected councillors as government agents

There is little documentary evidence of official or academic consideration of the possible side effects of suddenly changing from a system of government-appointed village officials to one of locally elected councillors. The issue perhaps warrants some additional comment here, partly because it became associated with increasing villager lawlessness in the late 1960s. It was generally accepted by the anthropologists that the changes in Niugini society promoted by culture-contact resulted in *irregularly* changing criteria for village leadership. From this I had concluded that as it was desirable to have *current* local leaders as local councillors, the easiest and safest way of ascertaining the present leadership in any area would be to have council members elected. Most of the anthropologists whose views had been sought on this point had cautiously endorsed the electoral approach. Its validity depended on the new council concept being attractive to village leaders, and on the electoral process itself being understood by the villagers.

It also seemed clear that once a council was proclaimed, and its members had been elected, the positions of the village officials (unpaid *luluais* and *tultuls* on the Trust Territory side, and fl per year village constables in Papua) would have to be abolished. In terms of Niuginian villager psychology, it would be essential to demonstrate unequivocally

⁷ A.M. Healy, 1961:167, incorrectly states that the principle of voluntary participation was applied *after* the policy had been implemented and partly because of the hostility of some native groups.

that commencement of the new system of statutory elected councils with statutory powers meant the end of the old system of government-appointed village officials.

But some nagging doubts remained regarding the *long-term* ability of locally elected councillors, even if endowed with the village officials' powers of arrest, to fill their predecessors' roles of being law and order watchdogs and village community-central government liaison men. As every experienced *kiap* knew, the individual performances of village officials in their non-traditional roles were always apt to be influenced by fears of sorcery⁸ and the gerontocracy's ancient prerogatives in regard to conciliation and compensation. But, granted that a majority of the old-style village officials were only active in their official capacities when gossip regarding unusual events had spread or when an Administration patrol arrived, their presence did constitute a crude but regular system of central government-village communication. Their removal could create a hiatus. A fairly rapidly evolving area council situation would probably confront a councillor with more complex problems in his home village than had previously occurred. In coping with them he should be strengthened by council authority, but could be weakened by being subject to periodic re-election. On probabilities, local political attitudes spawned by area council activities would become increasingly critical of at least some central government philosophies. For these reasons, and even assuming that each small village retained its own council member (improbable), elected councillors could hardly be expected to maintain high standards as law enforcers or as local community-central government liaison men.

My overall plan envisaged that the councils, like their African counterparts, would be allowed to employ their own police, but I assumed that, as in comparable African situations, financial stringency would preclude any council from having more than one or two officials of this category. I also hoped to develop a junior-partnership relationship between councils and various central government organisations, including the regular Police Force.

⁸ Fears not always on the part of the official. Two highly respected *luluais* I knew in Aitape were reputed to be skilled sorcerers.

When I discussed these considerations with Jones, his first reactions made it clear that he did not favour councils employing any subordinate officials in a police capacity. He initially suggested that the village officials should be retained to cope with councils' law and order responsibilities, but ultimately agreed that establishing councils necessitated dismantling the old system. He then suggested that the councillors themselves would have to fill the gap. In an unusually frank outburst Jones declared that the arrogance of the white officers in the regular police force following their post-war rise in status ruled out the possibility of having indigenous central government police working in council areas under council orders.⁹ We agreed that in any event such an arrangement probably would not be acceptable in all areas, and that it carried some peculiar risks to the council policy as a whole. Reasonably enough, he maintained a 'wait-and-see' attitude to my suggestion that if the elected councillors ultimately proved unable or unwilling to exercise dual roles, central government might need to consider employing some category of paid minor village official who would function as a central government-local government-local community agent.

I have devoted some space to the discussion of this issue with Jones because I do not recall any other occasion during the formative years of local government on which it was considered at senior officer level. Subsequent evolutionary developments made it a topic in many conferences during the decade 1963-73, but no decisions were taken. My most recent information on the matter was from a former District Commissioner. In a December 1974 Christmas card he said that his current job in Port Moresby was 'trying to get village courts and village peace officers on the production line ... years too late'.

⁹ Before the war Papua had only one or two regular white policemen. Apart from a superintendent and two inspectors, the dozen or so regular white police in TNG had warrant officer status. White police officers were given commissioned status when the Royal Papua New Guinea Constabulary was re-organized and expanded during the military administration (ANGAU). After the war they retained commissioned rank as sub-inspectors, inspectors and superintendents.

Appraisal of the new legislation

In late December 1949, following a suggestion made by the then Acting Director of DSNA (M.C.W. Rich, a pleasant former Assistant Resident Magistrate in the Papuan service) I compiled a lengthy memorandum on the new legislation.¹⁰ Rich had stated that he would circulate it to other departmental heads. It spelt out the need for an area approach and for decentralising low-level judicial authority. The memorandum commenced rather oddly by stating: 'It is noted (C.A. 6/55 of 7/12/49 refers)¹¹ that all references to the Village Courts Ordinance have been omitted, but that it is anticipated that the Courts Ordinance, together with an amending ordinance, will be promulgated at some future date. In my opinion it is essential that the [Councils and Court] ordinances be promulgated simultaneously'.

Subsequent paragraphs briefly outlined the evolution of 'the local government policy' of native administration in British Africa, including the native authorities and Kenya councils systems, and described the existing Niugini situation.

The low evolutionary level of native political institutions (in Niugini) means that local government organisation must be ... somewhat artificial in character. The indigenous authorities are small groups of conservative non-hereditary elders, with jurisdiction limited to their immediate villages. In the more advanced areas they have already lost some of their traditional functions and much of their old power. In addition to these, and frequently in opposition to them, there is a growing 'middle-class' of younger men thrown up by the recent war and the progress of the general culture-contact situation.

¹⁰ 'Comments on the Village Councils Ordinance', dated 28 December 1949, addressed to the Director, DSNA (7 pages). Circular Instruction No.130, entitled 'Notes on Native Local Government', and issued by DDSNA on 2 May 1951, was partly derived from this memorandum. Copies of C.I. No. 130 were circulated to religious missions and commercial firms as well as to field officers.

¹¹ I have no notes (or memories) regarding the precise content of this C.A. 6/55 memorandum.

The short-term success of the new policies would largely depend on their being acceptable both to elderly conservatives and younger 'progressives', on integrating the interests of these groups, and on solving the problem of effecting 'voluntary combinations of authorities with jurisdiction over larger groups than single villages'. While this approach was 'artificial, because there is no precedent for it in traditional [Niugini] social organisation', it was necessary 'because a large series of petty councils established on a strictly village basis would be ... unworkable'.

The memorandum suggested that Niugini conditions facilitated an approach to the new courts and councils based on 'separating the local government executive from the local judiciary ... right at the beginning. The elders ... could provide most of the personnel for the local court bench - this would serve to reaffirm their traditional status and should enlist their cooperation; the younger ... men should be given outlets - and responsibilities - on the council ...', but 'neither class ... should be excluded from either body ...'. It added: 'In every situation local native opinion, expressed at open meetings or through ballots, must be the deciding factor'. Because of the need for an empirical approach 'the exact situation regarding the Courts Ordinance must be known before the Councils Ordinance is implemented .. Even if it is decided to combine executive and judicial functions in the one body ... it is still essential to have clarification on the Courts Ordinance before commencing (council) organisational work'.

Between 1946 and 1950, native courts and councils were usually discussed in the one memorandum, and led to the DDSNA records office placing all papers relating to 'Native Courts' on the 'Native Village Councils' file. This was the reason why my memorandum of 28 December 1949 on the councils ordinance also referred to 'comments on this file which indicate that separation of the judiciary from the executive (at tribal area level) can best be done by training native magistrates ... To the trained legal mind the idea that untutored natives should be given judicial powers is particularly distasteful'. This seems to have been a scarcely veiled reference to Chief Justice Phillips's two lengthy memoranda of 11 October 1946 and 2 December 1946 which strongly opposed native courts manned by villager lay magistrates. In his October paper, Phillips had suggested that the Administration could 'select certain natives for a prescribed course of training, with periodic examinations,

as special native magistrates. This would take longer, of course, and produce fewer magistrates ... but those who passed ... could be usefully employed'. It was presumably with Phillips's expressed attitudes in mind that I commented that

we have to govern, and fit into our system of government ... people whose culture, values and institutions differ markedly from our own ... we cannot do this by trying to impose an alien system ... a policy of utilising subordinate native magistrates ... would mean a continuance of the present system. The important point is not the skin colour of the magistrate, but whether the native population is to be educated from within ... to administer the law itself.

Niugini's lack of traditional institutions - other than warfare - for the settlement of disputes 'extending beyond the village' might militate against the acceptance of (inter-village) 'tribunals with wider jurisdiction ... but it is still an approach that must be fully tried out'.

In retrospect, there was prophetic irony in the warning given in paragraph 13 of this 1949 document:

Care must be taken lest false analogies be drawn between local government powers and practices in Australia and what we are about to attempt here. Shire local government in Australia, admittedly much less developed than in England, is concerned only with some of the civic affairs of ... [rural] societies which are culturally integrated with the rest of the population and have their place in the political and legal systems of the State. In such a situation there is no necessity for local government bodies to maintain, for example, their own judicial systems; nor, if we could immediately fit our native population into our system, would there be any need to set up an ancillary judicial system here. But the fact is that the bulk of this country's population can only be brought to this stage by long and tedious processes, working in the first place from native institutions as they exist at village level.

In the legal sphere the warning was wholly rejected; in some less securely fenced arenas of the Administration it was temporarily accepted. During the decade 1950-60, some useful junior-partner relationships were fostered between councils and the departments of Health, Education and Forests. But in other fields, the Native Authorities Section's efforts to develop area councils as multi-purpose institutions achieved at best only temporary successes. These included the Tolai Cocoa Project, the Baluan (Manus) store and saw-mill, and the tree-crop schemes based on tenure conversion launched by Tolai councils on the Gazelle Peninsula, and by the Ambenob (Madang District), and Higaturu (Northern District) councils. None of these projects reached a stage of development where its continuing well-being was no longer dependent on government official ministrations; possibly, none would ever have done so, but this remained unproved. In 1961 the Niugini lower courts and councils were pushed heavily towards conformity with the Australian legal and local government systems when Hasluck, without query or delay, accepted Professor D.P. Derham's Report (see Chapter 6).

In its 'Notes on Sections of the Ordinance' this 1949 memorandum objected to retention of the term 'village' in the title, and insisted that

to fulfil their purposes as self-supporting local government agencies councils must be considered right from the beginning in larger terms than single village units ... The local government policy of native administration will only become real to the extent that it succeeds in overcoming inter-village antipathies and effecting larger combinations. Since the ultimate aim is not a series of petty village councils, there seems no reason for adopting misleading nomenclature at this stage.

Events during the next fortnight indicated that my explanatory memorandum had not made much impact in the Konedobu area. Early in January 1950 the obliging Rich arranged discussions with Treasury officials regarding the implications of council taxation and the initial financing of councils and with the Crown Law Officer regarding native courts and the drafting of the regulations needed to make the councils ordinance operative. No optimistic notes were sounded at these meetings.

The effects on the local government policy of the Australian Government's post-war philosophy regarding Niugini taxation will be referred to subsequently. Here it will suffice to note that in these early 1950 discussions the Treasury representatives would not be persuaded that the 'village councils' provided for in the ordinance could be other than small primitive counterparts of Australian shire councils. The Treasury men seemed to regard section 19(a) of the ordinance, which empowered a council to 'levy rates and taxes to be paid by natives within its area', as a potentially dangerous aberration. It was 'wrong in principle' for local government to usurp a central government prerogative; the 'junior partnership concept' in the funding of local area social services was also wrong.

Initial financing of Councils

The Treasury officials' attitude to the argument that new councils should receive grants-in-aid again reflected an apparent inability to envisage situations outside the Australian context. Treasury would consider applications for financial assistance from newly established councils if they could not obtain bank finance. Any Treasury assistance would be in the form of interest-bearing loans which would be made subject to each borrowing council offering security in the form of mortgages over assets. It was pointed out that a newly established council would have no tangible assets.

It may be best to disrupt the chronological sequence briefly here to conclude the story of this initial financing issue. DSNA considered that an important matter of principle was involved, but Treasury remained unmoved. On 20 January 1950 Rich signed a memorandum ('Government Loans to Village Councils' D.S. 14-3-15) addressed to the Government Secretary, which pointed out that 'there will be an interval, probably amounting to months, between the formation of a local government unit and the organisation of its sources of revenue'. A subsequent paragraph commented that

while a Native Village Council, as a body corporate, will be theoretically entitled - subject to approval - to raise loans through normal commercial channels, it is certain that ... no bank would be prepared to advance credit to any such organisation lacking tangible assets. The onus thus falls on the Administration itself to initially subsidise councils or to advance loans.

After noting that in British colonies it has been common practice to give newly-formed local government units initial grants-in-aid, Rich modestly suggested - presumably with one eye on Treasury - that the Niugini Administration should be prepared to make available to councils interest-free loans *up to a maximum* of £3,000, with a five years' maximum repayment period. He calculated that the total appropriation required for initial financing of councils should not exceed £25,000. After emphasising the psychological importance of the establishment of a council being 'rapidly supported by some material achievements readily apparent to native eyes', Rich's memorandum concluded by warning that 'withholding temporary financial assistance will effectively prevent any such advance, will condemn the policy to a dangerously slow rate of realization, and will jeopardize its chances of success'.

I do not recall what response was made by the Government Secretary, but the Treasury view prevailed. Shortly after its proclamation in September 1950 the Hanuabada Council applied for and was granted a £150 Treasury loan at 4½ per cent. (It was repaid after the initial tax collection.) In the Tolai area, the Reimber and Rabaul Councils were tided over the period between proclamation and tax collection by interest-free loans subscribed by their own Tolai constituents. (This action was initiated by leaders in the Reimber area when the financing problem was explained to them.) The Vunamami Council was initially financed by constituent villages donating to it some relatively substantial group funds held in village savings bank accounts. The Baluan Council at Manus was financed initially by the Baluan villagers subscribing to it their share of the communal 'Paliau Bank'. The Vunadadir-Toma-Nanga Nanga Council commenced operating with an interest-free loan from the Vunadadir Local Government Centre. The Centre itself had been initially financed by selling to Tolai councils (for council houses, etc.) Quonset hunts and galvanized roofing iron (at that time unprocurable commercially) that local government officials had brought back from Manus on Administration trawlers. In later years the older Tolai councils, sometimes on the initiatives of local government *kiaps*, occasionally granted low-interest loans from their reserve funds to new units proclaimed in other districts.

During the next few years local government officers periodically revived the initial financing issue. In a memorandum sent from Rabaul in October 1952 (addressed to

DDSNA but obviously aimed at the Treasurer) the Senior Native Authorities Officer (SNAO) recapitulated the 1950 arguments in favour of central government granting interest-free recoverable loans to newly proclaimed local government units. He added that 'unlike native commercial ventures, Councils are completely "safe" subjects for loans ... They operate on a basis of approved estimates; their expenditures are supervised and they cannot suddenly become insolvent' ('Recoverable Loans to Native Village Councils' D.S. 14/11/6, dated 10 October 1952). With two years' practical experience of village councils behind him, the SNAO was now in a position to comment that 'even at this early stage of local government development the existing councils are saving the Treasury, both directly and indirectly, some thousands of pounds annually'. As the expansion of the council policy meant more 'shouldering by councils of a growing share of the cost of social services in their areas ... the granting to them of initial financial assistance is obviously sound common sense'.

Looking ahead, the SNAO wrote that

we must envisage situations where there will be compelling reasons for establishing local government machinery in areas whose people will only be truly on a cash economy when the council, in conjunction with various administration agencies, has organized the means for economic production. It might be quite impossible to handle such situations without initial financial aid from the Administration in the form of comparatively substantial recoverable advances.¹²

He suggested that £15,000 of the Trust Fund established for native development and welfare from the ANGAU Production Control Board Trade Store profits could be used 'for financing newly launched local government units on the basis of interest-free loans up to a maximum of £2,500, and repayable within five years'.

These representations were no more successful than the earlier submissions. My personal papers record only one

¹²'Recoverable Loans to Native Village Councils' D.S. 14/11/6, dated 10 October 1952. A footnote to this memorandum identifies 'the means' as including provision of vehicular access, purchase of tools and plant, the organising of clearing and planting operations.

further broadside on the initial financing issue during the remaining period that I was SNAO. In a 20-page survey of native local government problems written in 1953, at the Minister's direction, I briefly recapitulated the case for recoverable advances to new councils, and maintained that the Administration should regard them as 'a sound and desirable investment'.¹³ The relevant paragraph concluded by stating that the only tangible result of the various submissions made on this issue during the past three years was the Treasurer's £150 loan at 4½ per cent to Hanuabada Council. 'Basically this initial financing question is a matter of how the Administration really regards the [local government] policy'. Mr Hasluck presumably remained unconvinced. The pressures for initial financial help to local government councils finally subsided in 1965, when the Administration agreed to make small grants-in-aid to newly established councils in areas with restricted economic potential.

The Administrator's reaction to the councils ordinance

Rich, the Acting Director of District Services, thought that I should discuss the salient problems of the infant local government policy with the Administrator, who was rarely accessible to officials below departmental head level. He arranged an interview for Friday 13 January 1950, using as a pretext my wish to seek Colonel Murray's support in the argument over my incremental level. As required by Murray, I was formally escorted into his shabby office by an Acting Assistant Director of District Services (E. Sansom) who then passed Murray my personal file and withdrew. I was mildly surprised to find the Administrator wearing a coat on such a hot day. Murray flicked through the file and said that he was sympathetic to my case and would speak to the Public Service Commissioner about it. (The Commissioner did not vary his decision on my incremental level. The issue finally subsided when I was appointed Acting Senior Native Authorities Officer with the salary range of a District Officer Grade I.)

Murray then asked how 'preparations for native local government' were progressing, and did not seem to have been briefed on the current problems confronting the policy. I informed Murray that the councils ordinance appeared workable but required some amendments. I emphasised the urgent need for clarification regarding native courts and general native

¹³'Native Local Government', D.S. 14/11/6, dated 24 October 1953. To DDSNA from SNAO. Reproduced here as Appendix III.

taxation and outlined the present state of discussions within the Administration on the initial financing of councils, on the drafting of regulations to be made under the councils ordinance, and on the voluntary participation approach. The Administrator indicated that he regarded courts and councils as separate issues. I refrained from reminding him that some of his own previous correspondence had expressed a very different viewpoint. Murray expressed mild disbelief that the generalised provisions of the brief village councils ordinance would have to be amplified with comprehensive regulations before any councils could be proclaimed. When I emphasised that I believed this assessment was shared by all experienced officers (including lawyers) who had examined the ordinance, Murray said he would accept it. I also informed him of the Crown Law Officer's warning that there could be lengthy drafting delays. My diary entry for Friday 13 January 1950 recorded this discussion with Colonel Murray as 'a profoundly disappointing session'.

Four days later Rich showed me a memorandum from the Administrator, dated 16 January 1950, which stated in part:

I wish to see a village council established at Hanuabada and elsewhere as you may think fit, as soon as possible. We have obvious areas in the Territory where councils should be in existence at the earliest possible moment, and we should not get bogged down in trying to make and perfect sets of regulations and warrants. Let us get a move on and subsequently amend regulations, warrants, etc. as experience indicates it necessary (Memorandum from Murray to DDSNA dated 16 January 1950).

The strait-laced Murray could not be suspected of writing for the record. His memorandum revealed inadequate comprehension. As an expositor I had again failed miserably.

Drafting the council regulations

At an interdepartmental meeting in J.H. Jones's office on Saturday 14 January, McCubbery, the Acting Crown Law Officer, confirmed his earlier advice that the village councils ordinance required supplementary regulations which his depleted legal staff would not be able to handle for many months. It was agreed that I should try drafting regulations in consultation with the CLO.

I also obtained agreement that to secure reasonable uniformity in council procedures and practices throughout Niugini would require some legal restraint on the propensities of many *kiaps* to be rugged individualists in 'native administration' matters.¹⁴ Accordingly, I argued, the regulations should lay down quite specific procedures governing councils' constitutions and meetings, the passage of council rules, the employment of council law enforcement officers, council taxation, councillors' emoluments, annual financial estimates, accounting methods and audits. I also held a firm view that, wherever appropriate, the overriding authority given to the District Officer in the councils ordinance should be amplified by regulations that spelt out the District Officer's concomitant responsibility to supervise council finances and to ensure that statutory recurrent council functions were performed.

Surprisingly, Jones supported my argument that legal gimmickry to these ends was desirable. In the long term, as I saw the future then, the evolution of native councils should diminish the administrative importance of the *kiap's* role. *Kiaps* would have other reasons also for hostility or indifference towards fledgling councils. First, they would probably mark the beginning of the end of direct rule. Second, councils would force *kiaps* to pay more systematic attention to village communities than had been normal in 'controlled' areas in the past. They meant more work. Third, whereas previously routine 'native administration' at sub-district level had been largely autonomous, it would now be subject to headquarters supervision and results would be readily measurable.

Before the meeting ended, Jones reiterated that the need to prescribe basic council procedures and methods in the council regulations (instead of following the more usual

¹⁴This propensity apparently continued unabated. In my memorandum of 24 October 1953 (fn.13) I commented (para.16) that

District Commissioners and their staffs, down to the lowliest patrol officer on the remotest Police Post, tend to exercise in regard to native policy ... what I can only describe as a sort of unenlightened local autonomy. It is autonomy by default, leaving a good deal at the mercy of individual whims and foibles, and of personal antipathies. It is also ... a dangerously inadequate concept of Administration responsibility.

practice of covering such matters in departmental instructions) derived from the characteristics of the old native administration system, and of the old-style field officers. He added that it was unlikely there would be enough headquarters officers familiar with the local government policy to make regular district inspections of council activities. In default of this, recalcitrant and uninformed field officers might take notice of printed regulations that were part of the law of the land. Printed laws in octavo size would also be more easily handled and more durable than duplicated foolscap sheets of departmental instructions. The Acting Crown Law Officer agreed with these views.

After preparing a submission to the Government Secretary, for signature by the Acting Director, calling for some amendments to the village councils ordinance,¹⁵ I concentrated on drafting the council regulations. It was a difficult job. British African 'native authority' practices provided some useful guidelines for the regulations and schedules covering the essentials of the council financial system, but had little relevance to other aspects of the Niugini situation. The brief council instructions of the British Solomon Islands Protectorate did not dovetail with our new ordinance. No other reference material was available in Port Moresby. In fact, I did not know of any existing colonial legislation or instructions that had been designed for the type of local government bodies (multi-purpose but financially weak area councils, with elected members and simple procedures) that I envisaged.

In addition to finance, the draft regulations, as indicated above, needed to cover such diverse matters as council constitutions, meeting and rule-making procedures, the council taxation system, including tax collecting, tax accounting and tax tribunals, and 'village' constables. The political and administrative feasibility of these techniques had to be assessed in the context of a hypothetical Niugini area situation that had not yet eventuated, and they had to make sense to white officials and brown villagers. The exercise required more pondering than paper, although

¹⁵ The recommendations dated 18 January 1950 included substitution of 'local government council' for 'village council' and 'council constable' for 'village constable' and increases in the maximum penalties. The titles, but not the penalties, were altered in 1954 as to councils, and 1952 as to constables.

my diary records that on 26 January 1950 Sansom, my near neighbour in the paper-walled office, complained that my two-finger typing disturbed him.

During the first week of February 1950 I persuaded Gordon Farmer, the Chief Auditor - our acquaintance dated from pre-war Rabaul days - to examine the financial and taxation systems set out in the draft council regulations. As a former roving auditor the genial but shrewd Farmer knew the realities of Niugini outstation situations, and had had wide experience of the diversified philosophies and propensities of *kiaps*. As my knowledge of accountancy is rudimentary I was pleased when Farmer gave the draft provisions his cautious, unofficial blessing. With this he made some useful suggestions, but stressed that his Commonwealth Government office would not be able to assume responsibility for auditing Niugini village council accounts.

There have been criticisms by academic observers, notably A.M. Healy, that the council financial system set out in the regulations was too elaborate, and that its tight official controls stultified all council initiatives. It therefore may be worth noting here that Farmer endorsed the technique of setting out the basic financial and taxation procedures in council regulations for the very reason that it placed legal obligations on *kiaps* to ensure that these procedures were carried out. With this, while opining that the financial affairs of councils would need regular supervision for a long time to come, he expressed doubts as to whether the *kiaps*' standards of supervisory performance could be effectively policed. Subsequent events largely justified Farmer's scepticism regarding the *kiaps*' roles as financial supervisors, but did not support his pessimistic view of indigenous accounting aptitudes. While illiterate councillors can develop a financial sense, they cannot be taught accounting. But at the Vumadadir Local Government Training Centre Colin Liddle, and later John Walsh, with their small staff of Niugini instructors, repeatedly demonstrated that youthful Niuginian council clerk trainees with no more formal education than Grade VI primary, could be taught to operate the council financial system very efficiently.

By 10 February the draft regulations had been examined by the Acting Crown Law Officer, and were in final form for the departmental blessing of the incoming Acting Director of DSNA, Ivan Champion, who resumed duty after leave on 13

February. Champion immediately sent them to the Crown Law Officer, for formal approval by the Administrator-in-Council.

Beginning work on the Tolai testing ground

It seems desirable here to interrupt the saga of the council regulations briefly and mention that on 27 February 1950 I moved to Rabaul. Shortly after resuming duty as Acting Director DDSNA, Ivan Champion had approved my recommendation that the Tolai villages of New Britain's Gazelle Peninsula should be the main testing ground for the councils policy. He accepted my argument that personal experience in organising and supervising the first area councils was an essential qualification for the official who would be immediately responsible to the Director for native local government generally. I also emphasized that the 33,000 Tolai people shared a common language; their villages were relatively accessible; they had been longer exposed to culture contacts than most Niuginian ethnic groups; and they were relatively affluent, with an economy that had been partly based on cash for over 50 years. My reasoning was that, with those advantages, if we could not establish councils successfully in the Tolai area the policy principles would need to be re-examined. Champion agreed. An additional advantage, from my personal viewpoint, was that J.K. McCarthy, an old friend who had been my superior officer at Talasea before the war, had recently taken over from Bates as District Officer of New Britain, and had already advised me that a house of sorts would be available in Rabaul.

I had hoped to staff the Native Authorities Section with some of the fourteen patrol officer graduates of the first ASOPA long course (two and a half years) who were arriving back from Sydney on the *Bulolo*, and had covered the various colonial systems of 'indirect rule' in their studies. In the event I obtained only one - Harry Plant. A few weeks later he commenced preparatory council work at Hanuabada. I did not receive any further staff until 4 August 1950 when the pressure point of the Paliu Movement (Manus) resulted in Jim Landman being posted to Baluan. I left Moresby on the *Bulolo* on 27 February, and landed in Rabaul on 5 March 1950.

Before sailing I called on Jones, who expected to return from his planning office to his Director's desk within the near future. During our various discussions on the new local government policy Jones's attitudes had been generally

consistent with his pre-war reputation of a 'two-bob-each-way' operator. He professed to favour area councils as the next logical step in indigenous advancement, but seemed unable to accept the logical implication: that their establishment meant a radical and irreversible departure from the old single-village 'law and order' pattern of native administration. His inconsistent opinions on council functions and finances further indicated a basic ambivalence in outlook.¹⁶ I told him solemnly that I already had adequate reasons for believing that many senior officials regarded the new councils policy as dangerously premature fancy-dressing designed to placate the United Nations. I added that I personally believed that a change-over to area councils was the most important task facing us in native administration, that I expected sharp opposition from a variety of white interests, including religious missions, when councils were proclaimed in the Tolai area, and guessed that I would be a target for enmity. I said that while I had not asked for the assignment I was prepared to 'give it a go', providing this was what my headquarters bosses wanted. In Australian jargon, I asked Jones was he 'dinkum' about local government. He earnestly assured me: 'I'll support you all the way'.

At Rabaul my thirteen years' service seniority won me temporary tenure of a small bungalow with sisalcraft paper walls and several thriving termite colonies. I importuned the Government Store, with modest success, for basic items of household furniture, and discussed my operational plans with J.K. McCarthy, the District Officer. It seemed important that the first attempts to set up Tolai councils under the village councils ordinance should be made in localities where culture contact had not evolved too far from Niugini tribal area norms. The radical changes in the system of 'native administration' implicit in the new policy had to be demonstrably within the scope of ordinary villagers. The basic criteria were a desire for progress in a westerly direction and willingness to cooperate with neighbouring groups rather than intensity of culture contact. These considerations indicated that, despite their easy accessibility,

¹⁶One example: Jones agreed that councils should be financially self-supporting but objected to their using cheque accounts for routine transactions. Ultimately, he reluctantly accepted that a system of countersigned cheques was more convenient and 'safer' than using savings accounts for routine transactions.

higher literacy rate and other short-term advantages, the large composite villages bordering Rabaul township, including the Matupit, Nodup, Malaguna and Volavolo groups, with relatively high proportions of daily commuting urban workers, would be less valuable 'guinea pigs' than more rural Tolai communities. It would be dangerous if the first councils were regarded as institutions for sophisticated suburban dwellers.

McCarthy endorsed this viewpoint and also agreed with my suggestion that the Reimber sub-division, comprising mostly inland villages south-west of Rabaul, might be the optimum starting place. I refrained from telling McCarthy that I knew very little about the area, but that Charles Bates had advised me to cultivate ToPoi, the Paramount *Luluai* of Reimber. Bates, a former policeman, had been Assistant District Officer at Rabaul prior to the Japanese invasion. His duties had included periodic meetings with the non-statutory Tolai village *kivungs* which had been set up in 1937.¹⁷ Post-war, he was District Officer of New Britain in the Provisional Administration until late 1949 when he was ordered to transfer to Madang, i.e. to change places with the more senior McCarthy. Even before this exchange of postings Bates and McCarthy had not been friends.

My personal knowledge of the Tolai country was hazy. Bates's suggestion regarding Reimber and Paramount *Luluai* ToPoi seemed sound. It had the additional attraction that my wartime henchman ToLat came from Rakanda, a Reimber village. We had not seen each other since parting company at Aitape in 1945, but had exchanged messages before I arrived in Rabaul. I felt irrationally confident that if I started council work in Reimber, the nice lies ToLat would

¹⁷ In late 1937, with another cadet patrol officer, I accompanied Bates to his monthly (sometimes fortnightly) meeting with the Matupit *kivung*. Solemn small boys brought chairs for the whites. The *kivung* members - all elderly men - settled themselves cross-legged in orderly rows on the largest woven pandanus-leaf mat I have ever seen. A prim grey-haired elder with steelrimmed spectacles produced a school exercise book and read out a summary of the disputes and minor offences dealt with by the *kivung* during the previous month. Bates confirmed the *kivung*'s findings and noted his approval in the exercise book. The small boys brought us green coconuts to drink.

tell his pals and kinsmen about both of us would facilitate developing friendly relationships with the Reimber 'big men' - the people I hoped to inspire with local government fervour. ToLat was also an excellent bush cook.

McCarthy sent ToPoi an oral message that we would like to visit him, and received a prompt favourable reply. On the following day we made our jolting way to ToPoi's house at Vunakalkalulu, at that time some seven vile pumice-track miles from Rabaul. The wizened but still active old Paramount had called in a few Reimber 'big men' to hear our talk. McCarthy introduced me and made a rather inaccurate statement of the Government's intentions regarding 'native village councils'. ToLat was absent on a tambu shell buying expedition, but had apparently done some homework. ToPoi referred to me as a young fellow whom ToLat had protected during the fight with the Japanese in Niugini. The old Paramount seemed genuinely interested in the council proposal, and offered me the occupancy of a new rest-house at the main Vunakalkalulu hamlet. I gratefully accepted.

After ascertaining from McCarthy that I would have the part-time use of an ex-Army jeep, ToPoi also offered me the services of a former Army driver, Tundor, who he said could look after me pending ToLat's return. Tundor was a son of Balilai, a genial Vunakalkalulu elder and close crony of ToPoi's. The Paramount *Luluai's* underlying motive was hardly subtle, but - providing that Tundor was suitable - it was a promising gesture. I soon learnt that Tundor, a short chunky man of about twenty-six with a ready smile and quick temper, was a capable driver and a good cook and laundryman. He also subsequently taught my infant son to speak Kuanua with a Reimber accent, and most of the four-letter obscenities commonly used in the Australian Army. Tundor remained with me until I left Rabaul. Twenty years later he was still driving vehicles for local government officers.

I moved out to Vunakalkalulu a few days later and used it as my principal base until my family arrived at the end of March 1950. To dissipate the traditional '*kiap's* visit' atmosphere, I was unaccompanied by police or any other Administration employees. My sojourns among the Urat and Urim villagers of inland Aitape during 1940-41 and 1944-45 had placed me firmly on the side of those *kiaps* who believed that the anthropologist's approach of living among a Niugini group with a minimum of formality was also a pre-requisite for a white official hoping to establish confident relations.

(Opponents of this view included some with a 'Sanders of the River' mentality, and some who regarded bush work in 'controlled areas' as an uncomfortable interruption of the home-station sporting and social round. Others argued more plausibly that while an anthropologist, as the observer of a culture, could afford to concentrate on one very small community, a *kiap*, as an agent of change, with impartial responsibility to a whole tribal group, should not create an impression that he favoured one small section of it.) I was also pleased to get out of Rabaul, at that time a depressing dusty sprawl of salvage yards, Japanese-built air-raid shelters, black-iron sheds and paper-walled houses. Its long-term future was uncertain: strong pressures had been mounted for the capital of the former Mandated Territory to be rebuilt at Rapopo, south of Kokopo and away from the known volcanic risks. Rapopo achieved 'firm decision' status, but Rabaul's magnificent harbour and freehold building blocks finally won the day.

Most of that initial stay in Reimber was taken up with explanatory talks on what area councils constituted under the NVCO would mean to the villagers. With this, I had a vital interest in trying to absorb whatever information on local political, economic and social factors was casually imparted during the subsequent discussions. Brief diary entries show that lively sessions sometimes occurred at Vunakalkalulu at night, following the advent of groups who had started their argument on local government theory in a distant part of the parish. In this highly important introductory work old ToPoi's prestige, coupled with his apparent approval of the council concept - and of me - facilitated developing friendly relationships with 'big men' all over the Tolai area. He sometimes accompanied me to meetings at other places and politely made introductory commendations in Melanesian Pidgin before settling down to doze cross-legged on his woven mat.

During these initial explanatory talks about councils to the largely uneducated Reimber villagers I tried to remind myself regularly of the hidden communication barriers. Niugini Pidgin has been described as a jargon with a Melanesian syntax and a polyglot vocabulary. It can be vividly effective in contexts familiar to the speakers. But in dealing with new concepts, the clumsy circumlocutions necessitated by the language's restricted vocabulary can result in quite remarkable misapprehensions. Beyond this I had thought that my wartime involvements with illiterate

village agents - or 'sentries' - had conditioned me to the need for patient repetitions of instructions and checks on distortions of assimilation.

At Reimber I soon learnt that communicating to Tolai elders, in pidgin, the basic concepts of local government of Niuginian people by their own elected representatives working within a frame of the 'Whiteman's law' of the central government was trickier than my wartime essays in primitive military intelligence work. Getting across what I hoped were undistorted pictures of quite elementary local government council functions was often a frustrating exercise, but I hoped that these aspects would become clearer when the council was established and commenced an annual programme. The basic philosophy I tried to project was built on the elders' own confused appreciation that traditional Tolai culture had been long affected by outside influences and that the process was accelerating. They readily agreed that their children's new and future needs had to be faced. The general proposition was that, if the Tolai people *wished* to advance, the establishment of area councils functioning as their own '*pikaniini Gavments*', was the first essential step. These councils would start the Tolai people on a long hard road. If they were strong, it could lead to self-government and a more comfortable way of life. It was the same road that had been partly traversed by the white men. They were still on it. To commence travelling that road, the Tolai villagers had to forget their old feuds and to work together. They had to increase their economic production and to pay taxes to their own council so that it would have the money to do things for them.¹⁸

In these initial talks I tediously reiterated that this road was also the only way I knew that would allow the Tolais themselves to regulate the direction and rate of their movement away from the traditional pattern without losing all their ancestral roots. As every Tolai knew, some old customs like fighting and eating enemies had been forbidden when the government of the white men came. Some other customs that were not the business of the central government might need changing by the people themselves. Thus the old Tolai laws concerning (matrilineal) land inheritance no longer seemed good to some Tolai men who wanted to plant coconut palms and cocoa trees that their

¹⁸The approach that *kiaps* were recommended to take is outlined in Appendix I.

own children could inherit. Only the Tolai people themselves, through their own councils, could change these sorts of laws of the Tolai ancestors.

The overt response of the Reimber folk to this propaganda and to subsequent developments was one of rational enthusiasm. The apparent lack of any symptoms of cult fervour led me towards some complacent assumptions regarding dividends accruing from sound explanatory work and good rapport.

Struggle to get the council regulations passed

The Administrator's strongly worded 'wish' of 18 January 1950 to see village councils 'established at Hanuabada and elsewhere ... as soon as possible' did not result in speedy Executive Council action to pass the regulations. During March, in response to Executive Council queries, I sent Champion some 'Explanatory Notes on the Draft Council Regulations'. My diary records that on 27 April, some two months after preparatory council work had started at Hanuabada and in the Tolai area, I visited Moresby from Rabaul and spent the following day in conference, 'arguing about the (Council) regulations'.

On 29 May 1950 in a personal letter to A.A. Roberts, who had become an Assistant Director of DSNA, I said I had received information 'that the most recent hold-up on the N.V. Council Regs. in the Ex. Co. was with regard to Reg. 35 and Reg. 39' and stated that the reasons for including these limiting provisions (they virtually precluded small single-village councils from having their own treasuries) had been set out in the 'Explanatory Notes'.¹⁹ My note pointed out that section 4(3) of the N.V.C. Ordinance specifically provided for village councils to include more than one village, and added:

If it is to be real, the local government policy of native administration must be considered, right from the beginning, in larger terms than single village units. To fulfil their purposes as self-supporting local government agencies [sic]

¹⁹ Regulation 35 limited a council's total annual appropriation for *emoluments* to 50 per cent of its estimated recurrent revenue; Regulation 39 stated that the *minimum* full allowance of a council member could not be less than £6 per year.

carrying out executive functions ... Councils must embrace a considerably larger population group than is afforded by the average New Guinea village ... From both the viewpoints of effectiveness and administrative supervision, any policy of setting up a large number of petty units on a strictly village basis, but endowed with financial functions, would be quite impracticable (personal letter to A.A. Roberts, dated 29 May 1950).

Roberts did not reply.

The council regulations were finally approved because of the Administrator's worries regarding the Paliau Movement in remote Manus District (the Admiralty Islands Group). In April 1950 Paliau had been convicted and imprisoned for six months by the A.D.O. at Lorengau (Manus District headquarters) for spreading false reports (Reg. 83(b) N.A.R.). His followers had complained bitterly to the 1950 United Nations Visiting Mission (the first of the Trusteeship Council's triennial inspections) which visited Baluan Island (Paliau's headquarters) a few weeks later. I believe that in a conciliatory speech the senior Moresby official accompanying the UNVM stated with decent vagueness that the 'new' councils provided for in the NVCO would soon be set up in Manus. Action was precipitated by the refusal of Paliau's followers to have any further dealings with the Lorengau district staff or with the Catholic Mission. At Rabaul I knew little of these Manus developments. In early July DDSNA Moresby advised me by radiogram that the Administrator had directed that I was to proceed immediately to Baluan and 'firmly establish village councils'. I sent back a radiogram to the Administrator direct, advising that until the NVC regulations were made law I could not establish a council in Manus or anywhere else. Late the following day I received radio advice that the council regulations would be promulgated 'within the near future'. On that assurance I went to Manus.

Another six weeks elapsed before the council regulations were 'made' by the Acting Administrator (Judge Phillips), 'acting on the advice of the Executive Council', on 26 August 1950. (Col. Murray was in Australia at the time.) They had been with the Administrator for about seven months. When the relevant Gazette (No.31 of 7 September 1950) reached Rabaul I found no substantial changes from the draft regulations, but I was astonished to read in the Acting

Administrator's notification that Section (e) of Part III, relating to village constables, 'shall not come into operation until a date to be notified by me by notice in the Gazette'. The remainder of the regulations were 'to come into operation forthwith'.

This unexpected development demonstrated pretty clearly that, irrespective of the NVCO's provisions, some powerful Administration officials remained wary of elected councils assuming responsibility even for basic law and order functions that had been vested in government-appointed village officials for two generations. Obviously I had again failed to convince my masters of the validity of the multi-purpose area council thesis. The implications of this failure were much more depressing than the fact that the constables had been excluded, for the current inability of the first four councils (their establishment had quickly followed the gazettal of the regulations) to employ any law enforcement officers was not a matter occasioning immediate concern.²⁰ Proclamation of a council had to be followed by elections and a period of intense organisational activity, including setting up basic administrative arrangements and a financial system. Until these things had been done no new unit would be geared to employ any subordinate officials other than its council clerk.

My radiogram to headquarters asking why Part III (e) of the council regulations had been frozen was not answered, but in a personal note Plant indicated that apparently Jones was responsible. I agreed to Plant's proposal that pending resolution of the matter the old-style village constables of the Hanuabada council group should remain in office. During explanatory talks the Tolai *luluais* (many of whom were elected as councillors) and *tultuls* had accepted the need to pass in their caps when the new councils were formed. This arrangement had to stand. During September and October I was too preoccupied with establishing the Reimber and Vunamami councils to pursue the issue of the 'frozen' village council constables, but recall having one brief conversation

²⁰The Reimber, Vunamami and Hanuabada councils were proclaimed on 14 September 1950. Baluan council was proclaimed on 28 September 1950. A brief description of Paliu's movement and the Baluan council is to be found in Rowley, 1965:177-9.

on the matter with Jones.²¹ Most of November was taken up with the first Mokolkol patrol (see Fenbury, 1968:33-50). It was late December 1950 before I was able to mount a full-scale attack in a lengthy memorandum that also dealt with some recent provocative behaviour by the Territory police in Rabaul.

The interval had enabled me to make some check on the reactions of the Reimber councillors and villagers to several months' preparatory tuition in the councils' varied responsibilities.²² The memorandum (Rab. DS.21/2 dated 22 December 1950) said in part:

I have repeatedly impressed on both the Reimber and Vunamami Councils that all administrative acts have a basis of law, and that one of their prime duties under the Council Ordinance is the maintenance of law and order within their areas. I have also warned them that unless they prove themselves capable of handling this task, even though it may mean temporarily jeopardising their popularity, the Councils must fail.

The memorandum went on to point out that, predictably, in the first flush of enthusiasm, the elected Reimber councillors were keen to demonstrate their new status and had engaged in some vigorous law and order enforcement in their home villages. It warned that this could be expected to be maintained, and that the only long term answer was to implement Part III (e) of the regulations and thence develop a 'junior partnership' relationship between council constables and the Territory Police Force. I believed that, granted goodwill and the exercise of commonsense by the Territory Police, arrangements of this sort were feasible even in the Tolai

²¹ I have no record of this interview (which probably occurred during a brief visit by Jones to Rabaul) but clearly recall that Jones stated that he and Canberra officers had been 'nervous' about councils having their 'private' police. When I asked what alternative arrangement they contemplated he replied: 'I don't think we knew what we wanted'.

²² The villagers of the essentially rural Vunamami council at Kokopo were much slower and more cautious in their response to the council concept than the more boisterous peri-urban Reimber folk.

area, despite its long history of town police-villager antipathies.

Part III (e) of the council regulations were made operative on 21 June 1951. The Hanuabada Council retained its old-style village constables until 25 August 1951.²³ I do not recall more than three council constables being employed by any one unit during the fifteen years that Niuginian local government carried responsibility for maintaining 'peace, order and good government among the natives residing in' council areas. Tight budgets restricted most councils to one or two policemen.

J.K. Murray's earnest paternalism caused one further delay in the launching of the local government system. Until its amendment in 1952, section 19(a) of the NVCO required a council to obtain the *Administrator's* written approval before it could 'levy rates and taxes to be paid by natives within its area'. The details of the taxation system were set out in the regulations (Part V). They included (Regulation 80) a provision that the amount of council tax payable annually would 'be decided by the Council in consultation with the District Officer or his representative and shall be incorporated as a rule of the Council ...'.²⁴ Shortly after its initial elections (18-21 September 1950) the Reimber Council had applied to the Administrator for approval to tax (regarded as a formality), and a few weeks later became the first council to pass a tax rule. Its rates (for the council financial year 1 January 1951-31 December 1951) were £4 for able-bodied males over 21 years of age, with a £1 rate for males aged between 17 and 21 years and for those women who, not being in one of the exempted categories, voluntarily made themselves liable for tax by having their names placed in the council's combined electoral roll and tax register.²⁵ (In initial council elections

²³In Papua the two categories of 'village constable' persisted until the 1952 amendments to the council legislation changed the title of the local government employee to 'council constable'.

²⁴In 1955 this was amended to read 'imposed by rule made and promulgated'.

²⁵The £4 figure, which was 8 times the pre-war TNG Head Tax rate, was ten per cent of the £40 in cash that, on the basis of many unscientific spot checks, we believed the hypothetical 'average adult male Tolai villager' could readily earn in a year (from cash cropping or casual wage labour) in addition to meeting his subsistence needs.

following a unit's proclamation the franchise was extended to all adult residents; in subsequent elections eligibility to vote was associated with liability for council tax) (council regulations 6 and 7).

As the passage of this Reimber rule marked the re-introduction of personal taxation in post-war Niugini, it featured prominently in the local radio news. Several weeks slipped by, but the formal written authority for the Reimber Council to levy taxes did not arrive. In response to my polite enquiries, DDSNA advised that the Administrator was withholding his approval because he thought the Reimber tax rates were too high. Fortunately, a short time later Murray passed through Rabaul. I obtained urgent audience with the Administrator on a Sunday morning, and was able to satisfy him that the Reimber Council tax rates were not excessively high for the Tolai area, and that they had been debated for two days by the full council before being passed and incorporated in a rule that had been approved by the District Officer. Murray seemed to have been under a misapprehension that it was his responsibility to approve the actual rates.

The Crown Law Officer's attitude to council proclamations

The casually co-operative attitude to native local government evinced by the Acting Crown Law Officer, McCubbery, in the drafting of the council regulations was not maintained by W.W. Watkins, the substantive Crown Law Officer, when he resumed duty. During my visit to Port Moresby in April 1950 I had asked Watkins if his office could issue a model council proclamation for the guidance of district officers submitting applications for new councils. My reasoning was that as the Crown Law Officer would be responsible for having the formal proclamations prepared for the Administrator's signature from information supplied from districts, circulation of a pro forma approved by Law should obviate some queries and delays. At Watkins's suggestion I drafted a hypothetical proclamation for discussion. Section 4(1) of the NVCO stated simply that 'the Administrator may, by proclamation, establish a Native Village Council in and for the area described in the proclamation'. (The draft regulations had referred to council proclamations only once - in the context of council elections.) As virtually no village land in Niugini had been surveyed, I devised a generalised formula similar to that used in the notices issued under the Native Labour Ordinance when it was desired to prohibit recruitment of labourers from certain (over-recruited) localities. My draft stated

that the area of a council would comprise 'those lands situated in the ... sub-district of the ... District owned or occupied by the natives deemed by native customary usage to be the inhabitants of the villages of A, B, C, D etc. ...'.

Watkins rejected this formula as being too vague. He stated that there must be legal certainty regarding a council's precise boundaries, and that this necessitated survey descriptions, as used in Australia 'and every other country that is sufficiently advanced to have local government'. I pointed out that in the existing Niugini situation stipulating a survey description of a rural council area as a prerequisite to proclaiming a council was not practicable, and that notices issued under the provisions of the current Native Labour Ordinance described tribal areas by listing the names of the component villages. I added that in British African dependencies similar devices were used. The Crown Law Officer shrugged and repeated with some vehemence that there must be legal certainty regarding a council's boundaries.

After my return to Rabaul I sent a second written submission to the Crown Law Officer on council proclamations. He did not reply, but in a personal note Plant advised me that Watkins's attitude remained inflexible, and that McCubbery supported him. By this time I was somewhat concerned. If I followed normal Administration practice and accepted the CLO's ruling we would need either to amend the NVC Ordinance or to hire numbers of surveyors. But in either case the only council likely to be proclaimed within the foreseeable future would be one small unit covering the suburban Hanuabada group at Moresby. The fact that similar problems of describing unsurveyed land in legal instruments had been successfully overcome in other colonial territories and in other Niugini legislation impugned the validity of the CLO's ruling. Reluctantly, I decided that there was no alternative to being a heretic. A lot of relevant material was in the ASOPA library, and I asked J.H. Wootten (later Mr Justice Wootten of the N.S.W. Supreme Court), at that time lecturer in Law at ASOPA, for help. Wootten promptly obliged with a neatly lethal two-page document that was readily transformed into a draft memorandum which I submitted for approval to DDSNA Headquarters. Ivan Champion, the Acting

Director, wasted no time in placing it before Watkins.²⁶

The Acting Director's polite refusal to accept Watkins's opinion forced him to submit the issue to the Chief Justice. I have never seen Phillips's written opinion, but was informed that in essence it endorsed Wootten's view that as neither 'area' nor 'described' (the words used in Section 4(1) of the NVCO) is a technical legal term, there should be no legal objection to the form of council proclamation that had been proposed. The Crown Law Officer conveyed this information to DDSNA without comment.

Subsequent events strengthened my early misgivings that this episode might prove to be a Pyrrhic victory for the Native Authorities Section. A few weeks later, when the CLO notified DDSNA that the much delayed council regulations had been approved, he also deprecated their 'non-legal' language. This was wryly amusing and of no consequence. As he had been away at the time of drafting, Watkins may not have known that this layman's code had been approved, and even mildly commended, by the lawyer acting for him. During the next few years, however, the Crown Law Officer's attitudes to local government were sometimes less amusing.

The emergence of anti-council forces in the Tolai area led to a succession of petty incidents whose political and legal implications sporadically drew panicky attention from central government.²⁷ In these issues the CLO might have been expected to maintain an official facade of cold impartiality. Perhaps this was Watkins's intention, but he repeatedly succeeded in conveying to New Britain field staff, and to some of his own legal officers, an impression of antipathy to councils and to their official mentors. During two conferences in Rabaul with Cleland in 1952 and 1953 McCarthy, the District Commissioner,²⁸ complained openly

²⁶'Native Local Government - Description of Council Areas in Proclamations' dated 29 June 1950. To Crown Law Officer from I.F. Champion, Acting Director, DDSNA. A touring legal officer friend informed me later that after reading Champion's memorandum Watkins commented that it was 'a lawyer's job ... that bastard Fenbury has got some advice from South'.

²⁷They culminated in the Navumeram riot of 1958, which was quite serious. See chapter 7.

²⁸In 1951 the title 'District Officer' was changed to 'District Commissioner'.

regarding both Watkins's attitudes and his professional competence. Cleland, also a lawyer, did not defend his chief legal adviser on either occasion.

Chapter 4

The general taxation issue

Before the Pacific war the Papuan Administration levied a head tax on able-bodied adult males in village communities 'deemed to have sufficient resources', and on males in employment. According to district circumstances, the rates were either 10s. or £1 per year. The maximum penalty for wilful failure to pay this head tax was six months' imprisonment. Members of the police force, village constables, mission teachers and fathers of four living children borne by one wife were exempt. There was no direct taxation of non-native residents. The proceeds of the 'native tax' collected in Papua went into a fund earmarked for native development and welfare. In the years immediately preceding the war the tax yielded an annual sum of about £16,000.

In the Mandated Territory of New Guinea in pre-war years a head tax of 10s. per year was levied on able-bodied male adults in areas that the District Officer concerned had recommended as having the necessary cash resources. In practice only the coastal areas were included. Natives in employment, village officials, mission teachers and students, and again fathers of four living children who had been borne by the one wife, were exempt. The maximum penalty for wilful failure to pay this head tax was, as in the case of Papua, six months' imprisonment. In the 1938-39 financial year head tax in the Mandated Territory of New Guinea yielded approximately £24,000.

Between 1942 and 1951 (when the first native village councils collected their first head taxes) there was no direct taxation of the native community or of any other residents of the Territory of Papua-New Guinea. As early as 1947, however, it was apparent that if self-supporting native councils were to be instituted they would need a source of local revenue. In terms of what was practical this meant some form of head tax. In an article published in 1947 in the magazine of the Australian School of Pacific Administration

I set out some general arguments in favour of re-introducing taxation in the form of a head tax for all residents in Papua New Guinea. In part this article said:

It is obvious that to fulfil its commitments the New Guinea Government will need every penny of revenue it can sanely and safely raise, and abandoning the principle of direct taxation now, only to revive it at a later date, as would inevitably occur, would be regarded by native opinion in a very unfavourable light. On the other hand, to resume tax collection after the long war-time lapse without adequate propaganda and an accompanying programme of social services comprehensible to native eyes would be to invite trouble (Fenbury, 1947:4).

Later in this article I commented that 'a non-native head tax ... could be introduced concurrently with the re-introduction of native head tax' (Fenbury, 1947:7).

At the time this article was written I had no knowledge of any early post-war correspondence between the New Guinea Administration and Canberra on the taxation issue. Years later, I found a 'résumé of the taxation situation' compiled by Brigadier Cleland shortly after he became Acting Administrator in 1952. It stated that Colonel Murray had had the question of native taxation examined in October 1946 and that in January 1947 he had submitted to the Department of External Territories a lengthy memorandum on the subject without concrete recommendations, but asking for the Minister's directions as to whether taxation should be re-imposed or not. Cleland's notes stated that no reply was received to this memorandum and that on 21 August 1947 Murray wrote again to Canberra in the following terms:

We are now in the second month of the new financial year and it is desirable that native taxation should be imposed as early in the financial year as possible. As I have previously said I consider that the native people not only as a matter of policy should contribute in direct taxation to the native welfare policy, but it is likely that they would welcome taxation of themselves to assist in the financing of such a policy.

On 3 November 1947, partly as a result of some debate stimulated by the *Monthly Notes* article on taxation, J.H. Jones, the Director of District Services and Native Affairs, submitted concrete recommendations for a native taxation scheme (personal information from J.R. Black, Acting Assistant Director in DDSNA at that time). There is no record that this document was ever submitted to the Minister at Canberra.¹

Cleland's résumé stated that in January 1948 Colonel Murray referred the whole question of taxation to Dr Ian Hogbin (at that time a lecturer in anthropology at Sydney University), who had been very actively associated with the Army Directorate of Research and Civil Affairs. In a short reply Hogbin concluded by saying: 'I am therefore forced to the conclusion that though the arguments in favour of direct taxation are excellent the time is not yet right for its imposition'. In January 1948 the Administrator sent the file to the then Principal of the Australian School of Pacific Administration, Mr J.R. (later Sir John) Kerr, and requested advice. No reply was received in Port Moresby until May 1948, when some comments were written by Mr J. McAuley on taxation proposals that had been drafted by the Department of District Services and Native Affairs. This was the situation when the Native Village Councils Ordinance was proclaimed in December 1949.

On 4 February 1950 I drafted a memorandum for the Acting Director of District Services and Native Affairs, M.C.W. Rich, which stated that 'the impending establishment of Native Village Councils under the recently proclaimed ordinance resuscitates the question of general taxation (memorandum DS9-2-4 dated 4 February 1950, addressed to Government Secretary). The memorandum briefly referred to the discussions regarding taxation that had occurred since the re-establishment of civil administration. It pointed out that whilst the Department of District Services and Native Affairs in 1947 had submitted a firm recommendation for the re-introduction of taxation, together with a proposal for a non-native head tax, there was no record on departmental files of any subsequent action.

¹ I have not seen this document since 1950. My memory is that its principles generally followed those of the pre-war TNG native taxation, but with firm recommendations that similar taxation of *non*-natives should be introduced concurrently.

The memorandum of 4 February continued (para.3):

Under the Councils Ordinance (Section 19) a Native Village Council may be authorised to 'levy rates and taxes to be paid by natives within its area'. It is, of course, axiomatic that any Council must levy taxes, for the local government policy of native administration is based on the principles that local government units shall be self-supporting and shall assume a share of financial responsibility for local social services. Since conditions in the Territory are such that the local government policy will be only applicable, at least for some considerable time, to particular tribal areas, a situation is liable to arise where certain indigenous groups are being taxed whilst adjacent groups, also in receipt of social services, remain untaxed. The exact effect on native opinion of an anomaly of this sort is difficult to predict, but it is possible that it will promote confusion and ill-feeling, and considerable misapprehension regarding the local government policy generally.

Rich's memorandum then pointed out that while the establishment of village councils was an additional reason for re-introducing general native taxation as soon as possible, there were also other equally compelling reasons. Amongst these he emphasised that the principle that the community should make some direct contribution to the cost of its services had never been officially abandoned but that it was now (paras. 4 and 5):

perilously close to oblivion in the minds of the native population. More than eight years have now elapsed since tax was last collected in this country, and a new generation has grown up to whom it is merely a vague memory associated with other vanished institutions of the pre-war era.

We will be rendering a poor service to the native community of the future if, through sheer inaction, we foster the false belief that this country's progress can forever be achieved at the expense of the Australian taxpayer.

The memorandum concluded by reiterating that the current attitude of the Department of District Services and Native

Affairs to taxation remained substantially the same as had been set out in 1947. It summarised the principal points as follows (para.6):

- (a) Direct native taxation in the form of a head tax levied at a series of flat rates according to the economic conditions prevailing in different districts should be re-introduced immediately;
- (b) Direct non-native taxation, in the form of a head tax, should be introduced as soon as possible;
- c) Native populations under the jurisdiction of Native Village Councils which are levying Council taxes should, for the time being, be exempt from paying Government head tax, provided that the rates of Council tax are not less than the general tax rate prevailing in the district in which the Council is situated.

The final paragraph of Rich's memorandum stated that 'from the viewpoint of native policy, it is imperative that there be an early decision regarding taxation. If the decision is affirmative there should be a firm date as to when it will come into effect'.

The Administrator does not appear to have communicated again with the Department of External Territories until 22 April 1950 when, in a memorandum to the Secretary for External Territories, he wrote: 'I refer to previous correspondence on [taxation] and have to inform you that as a result of directions given by the Minister during his visit to the Territory action is now in hand to draft legislation providing for the re-introduction of native taxation as from 1st July, 1950'. The minister concerned would have been the Minister for External Territories at that time, Mr Percy Spender.

There appears to have been no further action on the matter for another eight months. On 20 December 1950 the Government Secretary wrote a minute to the Director of District Services and Native Affairs indicating that Canberra was having second thoughts on the tax issue:

In relation to the announcement made by the Minister for External Territories during his visit to the

Territory in April, 1950, that taxation would be introduced in the Territory (i.e. business and income tax), advice has just been received from the Department of External Territories that the Minister is reviewing the matter and has not yet decided that there shall be direct taxation in the Territory. A statement covering the argument for and against the introduction of direct taxation to the Territory is being prepared in the Department of External Territories at the Minister's direction and, upon completion, his decision will be notified. No advice has been received from the Department that the Minister does not wish native taxation to be proceeded with although it is quite possible that this may be his desire. His Honour the Administrator is anxious to receive advice of the proposals that you have formulated in regard to native taxation.

On 28 February 1951, that is more than a year after the Native Village Councils Ordinance had been proclaimed, a draft ordinance for general taxation was forwarded from the Government Secretary's office (Port Moresby) to the Department of External Territories with the following comments:

The draft Ordinance has been framed by the Acting Crown Law Officer, in conjunction with the Acting Director of District Services and Native Affairs, but has not been considered by the Executive Council. The draft is forwarded for submission to the Minister for direction whether, or not, taxation of natives is to be introduced at this stage. If the direction of the Minister is that taxation is to be introduced, the draft will be considered by the Executive Council and then forwarded to you for enactment. Action to bring the draft Ordinance before the Executive Council has not been taken in view of the advice that you forwarded that the Minister had not yet decided that there shall be direct taxation in the Territory and that a statement concerning the arguments for and against taxation is being prepared in your Department.

Following the forwarding of this remarkable document, nothing was heard from the Department (reconstructed in May as the 'Department of Territories') for another eight months.

On the 12 November 1951 the Administrator sent to Canberra four copies of a draft ordinance which had been considered by his Executive Council. According to Cleland's résumé, the drafts were accompanied by the following comments:

No definite advice has yet been received from you concerning the policy to be adopted in this matter. If the Minister is in agreement with the levying of these taxes, it will be appreciated if steps may be taken to have the necessary legislation enacted prior to the setting up of the Legislative Council.

On 3 December 1951 the Department of Territories advised as follows:

The Minister considers it preferable for a tax of the nature proposed in the draft ordinance to be reserved for self-imposition through village councils for the purpose of revenue received by those councils, rather than for it to be imposed by law of the white community.

The Minister considers it undesirable to contemplate the introduction of such tax at the present moment, however. Further consideration will be given to the question after the nature of direct tax to be imposed on the non-native population has been settled.

This cryptic minute was over the signature of Mr C.R. Lambert, the Secretary of the new Department since the end of May, and the minister concerned was Mr Paul Hasluck, who had assumed office on 11 May as Minister for Territories.

These exchanges at senior level were not very helpful to the Senior Native Authorities Officer, who carried responsibility for implementing a council policy based on strictly voluntary participation and necessarily involving taxation, without any background of general taxation. On 19 December 1951, at the request of the Director of District Services and Native Affairs, I submitted to him a memorandum which began by stating that the meaning of the second paragraph of the Territories Department memorandum of 3 December 1951 was obscure: it seemed to imply that native village councils should not yet be authorised to exercise the power to levy council tax that had already been granted to them under

section 19 of the Native Village Councils Ordinance - and which they were exercising. The memorandum continued:

The Minister saw something of the local government policy in operation during his first visit here and personally examined a set of Council Estimates and a Council's Appropriation Ledger. Hence he is, I am sure, aware that all Councils constituted under the Ordinance to date are essentially self-supporting bodies, deriving most of their revenue from Council taxation. For the same reason he knows, I feel sure, that Councils have well defined functions; that a major portion of each unit's annual revenue is being expended (with Council consent and on a junior partnership basis with the relevant technical Departments) on social etc. services within its area. Thus Councils are building schools and medical aid posts and are assuming financial responsibility for the wages of Native school teachers, Native medical and hygiene assistants, agricultural instructors and the like. This, of course, within the policy framework of the Department concerned and without any diminution of technical department control ('Native Taxation' dated 19 December 1951, file 11-3-63).

The memorandum went on to point out that even in its present youthful stage the local government policy was resulting in some appreciable savings to the Administration in the cost of native social services. It added: 'The natives of Council areas are slowly learning that improved standards of health, education and agriculture, better roads and adequate water supplies, are not only the essentials to raising living standards, but must also be paid for'. The memorandum then commented on the surprising willingness of the people in the six council areas thus far proclaimed 'to tax themselves at rates considerably in excess of those prevailing before the war'.²

²The pre-war Papuan head tax was £1 and 10s. and that of the Mandated Territory was 10s. The 1951 tax rates of the Baluan, Reimber and Rabaul Councils were £4 and £1; that of Hanuabada £2; that of Vunamami £1 and 10s. (the Vunamami Council started with £3,900 of non-recurrent revenue in hand from village funds that had been voted into the Council).

The memorandum then went on to warn that, despite the current enthusiasm of council area communities,

5. ... a somewhat peculiar situation is developing. While natives in Council areas are making an appreciable contribution towards the cost of government, natives in other areas (some of them in receipt of at least an equal spread of social services) are contributing nothing. To date, the effect of this anomaly on native opinion has not been particularly marked. This is partly because the policy is new, and to have a Council is a matter of prestige; partly because, in most of the areas where the policy has been thus far applied, Councils are building schools, aid posts, etc. that were not there before and which are in demand; and partly because (at least on the Gazelle Peninsula) there is an idea that general native taxation will be re-introduced.

6. The first whispers of reaction to the anomalous tax position, however, (almost certainly inspired by those non-native elements who regard the local government policy as a threat to their own interests) are now being heard. Thus, members of two [Tolai] Councils reported that natives from a non-Council area had jeered at them for having to build a school with their own money 'whilst we got ours for nothing from the Government'. It is probable that, as the novelty of local government organisation palls, such talk will become active anti-Council propaganda, and will be conducive to ill-feeling and confusion regarding the local government policy generally.

7. The implementing of the native local government policy thus becomes a powerful argument for the re-introduction of general native taxation, particularly to those areas where conditions of terrain, population density and economic advancement render the application of the local government policy feasible, but where Councils have not yet been established, or the people do not want them established. Is an area able to support a Council, but unwilling to do so, to continue receiving its social etc. services free? If so, it may not be long before we have a great many such areas.

8. It must be borne in mind that the approach being made to local government by the Administration is based on the popular will ... Inclusion of a group within a Council area is entirely a matter of whether all the people want to be within the Council.³ If, however, Councils are to be the sole media for direct native taxation, this approach, of entirely voluntary association, will have to be reviewed. It is impossible to contemplate a network of local government units covering an area, but with here and there, in glorious isolation, a solitary village or group that for some reason has decided to remain aloof and untaxed, but nevertheless is benefiting from its neighbours' efforts. In general terms, I do not see how any form of public taxation can be handled on any basis of voluntary contribution. The effects of introducing such a system into our own Australian society would probably be most disconcerting to the Federal Treasury. ...

I have quoted this memorandum at some length because the Administrator sent it to Canberra as a complete document. Cleland's précis, to which I referred above, stated that on 8 January 1952 the Senior Native Authorities Officer's memorandum was sent to the Department of Territories, and that on 18 February 1952 the Department replied in the following terms:

The decision of the Minister means that further consideration of the question of direct tax on the native population, whatever authority collects it, will be given after the nature of the direct tax to be imposed on the non-native population has been settled.

The decision does not involve any change in present policy or practice regarding taxes collected by native village councils as provided for in the Native Village Councils Ordinance.

³A footnote to the memorandum stated: 'At the present time, formation of a Livuan Council covering some 21 villages along the Gazelle Peninsula, North Coast, is being held up because two of the five small Watom island villages, under sectarian pressures, do not wish to enter it'.

Cleland's résumé noted that on 26 February 1952 a further memorandum from the Director of District Services and Native Affairs was transmitted to the Minister together with a recommendation from the Administrator that the determination of the nature of the direct tax to be imposed on the non-native population be settled at the earliest possible date. Apparently a reminder was sent to Canberra from Port Moresby during August 1952, for on 2 September 1952 the Department wrote to the Administrator in the following terms:

Your memorandum of the 15 August 1952 and enclosures, were placed before the Minister who has intimated that, notwithstanding the difficulties mentioned by you, he is not prepared to agree to the introduction of legislation imposing a tax on natives of the nature suggested. It is the Minister's view that a tax of this nature should be reserved for self-imposition through Village Councils for the purposes of revenue received by those Councils.

The use of tax comparisons as a ground for opposition to Village Councils is appreciated as having a deterring effect on the expansion of those Councils and, no doubt, it is encouraged by those Europeans who are opposed to Village Councils. I can only suggest that the circumstances call for greater concentration on extension and propaganda work in furthering the interests of, and extending the influence of, the Village Council movement.

I was involved in discussions with my departmental superiors on taxation and other council matters during late September 1952, but my personal records do not indicate that I was informed of the uncompromising nature of the Minister's dicta of 2 September regarding the re-introduction of general taxation. At any rate, on 13 October 1952 I forwarded to the Director of District Services and Native Affairs a memorandum (DS.14/11/6 dated 11 October 1952) submitted to me by M.B.B. Orken (at that time an Acting Native Authorities Officer in the Tolai area), and entitled 'Problems Affecting the Extension of Native Local Government in the Gazelle Peninsula'. Orken stressed the administrative anomalies arising from the non-re-introduction of general native taxation and the refusal of the Raluana, Navumeram and Viveran-Takabar groups to enter councils. After commenting

that more than 15,000 Tolai villagers were already paying taxes ranging from £4 to £1 to their own councils without apparent strain, he warned that

This very satisfactory situation ... should not lead us to believe that tax paying is a popular pastime; and it will become less popular and harder to collect, if groups of their own people, by refusing to join Councils, are relieved of the necessity of tax paying. It will be an added aggravation, to see that these groups apparently suffer no diminution of government regard or government provided social services.

In justice, therefore, to the tax-paying section of the native community ... and to provide an inducement to the dissident groups to join the Council system, I suggest the reintroduction of head tax at a rate not less [Orken's emphasis] than the average rate of tax in the Council areas ...

In my covering memorandum entitled 'Future of the Native Local Government Policy' I said:

Thusfar, our approach to local government promotion has been based on the assumption that general taxation would be revived within a reasonable period following the policy's implementation. Now, after two years of waiting, it appears that, for reasons presumably unconnected with native policy considerations, passage of the enabling legislation will be delayed indefinitely. In consequence, it seems that fairly soon we may be confronted with a situation where either the local government policy must be jettisoned, with abolition of the units already established, or the Administration's attitude towards its application must be re-defined.

Subsequent paragraphs outlined an existing situation (to which Orken's memorandum had directed attention) in the Viveran-Takabar group. I quoted Orken's observation that these people, while not particularly sophisticated, were 'asking, not unreasonably, why they should enter a Council and pay taxation to support a school and aid-post when they already have these institutions provided free by the Government'.

A later paragraph suggested that 'short of abandoning the policy two courses of action seem open to us, although it must be noted that they are not strictly alternatives'. The first was 'to press urgently for the re-introduction of general native taxation'. The comment on this point read:

Once this is effected, native communities whose areas are regarded as suitable for the local government policy's application can be offered a choice between paying tax directly to the Central Government, or forming their own local authority and paying tax, probably at a higher rate, to it - and simultaneously having a voice (and tuition) in the conduct of their local affairs.

The great disadvantage of relying on this course of action is the probability that the local government situation will have deteriorated before Canberra can be persuaded to change its present views.

The second alternative was 'to abandon the strictly voluntary basis on which local government organisation has proceeded to date'.

In a memorandum to the Government Secretary J.K. McCarthy, the then District Commissioner, New Britain, supported my viewpoint and commented on the 'unpleasant situation - I could use the word "dangerous" - that can wreck the [local government] policy ...' which he believed was 'due to dawning native appreciation of the anomalies between tax-paying Council groups and tax-free non-Council groups - particularly those who have ... rebuffed the "voluntary participation" approach' (McCarthy to Government Secretary memorandum D.S. 14/11/6 of 27 October 1952).

On 10 January 1953 I received from Port Moresby a copy of a memorandum that Lambert, the Secretary of the Department of Territories, sent to the Administrator on 23 December 1952. After advising that the Minister had approved the creation of six additional Native Authorities Officer posts Lambert, by direction of the Minister, quoted a Ministerial minute. It read:

The basic consideration is that we have decided to use the Village Councils as (1) the most hopeful means of fulfilling our objective and

our responsibility of assisting the political advancement of the native people and (2) a useful means of raising the standards of living in the village. The difficulties that have arisen over the question of whether to tax or not to tax have arisen as a side issue incidental to the promotion of Village Councils. We should not allow major issues to be decided by our judgment on incidental issues, even while the effect of the incidental issues is being weighed. The present decision is a decision reaffirming the policy of promoting Village Councils as a means of political education and social betterment and is not a decision on anything else.

In late January 1953, in a memorandum entitled 'Future of the Native Local Government Policy' addressed to the Director of District Services and Native Affairs, Cleland observed:

It is clear that the approach to local government promotion has been based on the assumption that general taxation would be revived. In other words the introduction of general taxation was really a precedent to the introduction of native Village Councils.

It is apparent that the Minister will not alter his present decision in regard to native taxation and therefore we must look for the solution along other lines.

The position should be strongly examined in conference before we adopt the alternatives suggested.

I shall be glad if you will please discuss with me arrangements for such a conference.

In April 1954, after I had been transferred back to Port Moresby, I wrote a memorandum to my Director entitled 'Extension of the Native Local Government Policy' which indicates that the situation had not changed. It read in part:

If the 'voluntary participation' approach is to be maintained, then general native taxation must be re-introduced. If general taxation is not to be

re-introduced but the policy is to be applied to selected areas without regard to the agitations that will be fomented by local area vested interests, particularly the Missions, then an unequivocal public policy statement is required. Also, the logical implications of 'involuntary participation' must be worked out.

I have no further records of any progress in the introduction of general taxation between 1954 and 1956 when I left the Territory for two years to become an Australian Government nominee in the Trusteeship Division of the United Nations Secretariat. In 1957 it was decided to re-introduce the pre-war head taxes as a central government tax. This resulted from increasing resistance to councils and increasing resistance to the payment of council taxation in some of the areas where councils had been established for seven years. A bill for an ordinance that was to be called the Personal Tax Ordinance was introduced at the October 1957 meeting of the Legislative Council. The bill exempted from personal tax those persons paying council tax. It also provided the machinery for the operation of the tax which was to be imposed for the calendar year 1958 by way of another ordinance to be called the Personal Tax (Rates) Ordinance (which was introduced into the Council at the same time and was designed to be renewed annually in the form of a rates ordinance). The tax was imposed on all resident indigenous males of 18 years or more and the general rate declared was £2, i.e. \$4. Reduced rates of tax were applied to various districts, and to census divisions within districts, on the advice of district commissioners. This method of rating became a target for constant criticism by non-official members of the Council and subsequently by elected members of the Legislative Council.

A second difficulty that became increasingly apparent during the next few years was that, while the personal tax (which following the introduction of income tax ultimately affected only certain categories of indigenous people) could be collected in the villages and from agreement workers who could be identified, it could not be collected from the casual workers in the urban areas who were rapidly increasing in number and who earned higher incomes than the rural workers. Detailed examination of the problems affecting the re-introduced personal tax, leading to its cessation in 1966 is, however, beyond my present purpose. It was last collected in the financial year 1965-66 and the total collection was \$66,847. Ostensibly, personal tax was re-introduced as a

revenue measure, but the Director of Native Affairs made no secret of his view that he had hoped that its introduction would help to break down opposition to the formation of local government councils. A subsidiary hope was that the necessity to pay a tax in cash would stimulate economic activity in a number of areas where villagers had continued to show remarkable reluctance to involve themselves in a cash economy. As a measure to stimulate the development of local government councils the late re-introduction of personal tax by central government must be regarded as a failure.

Chapter 5

The significance of government organisation for the local government policy

It was mentioned above that towards the end of 1949 J.H. Jones, the Director of District Services and Native Affairs, had temporarily left his department to concentrate on planning. His assignment reflected a disorganised central headquarters situation that did not augur well for the development of councils as multi-purpose area authorities. While Jones himself, a former Medical Assistant with highly-developed political instincts, was not well equipped for his new role, its very creation indicated a rejection in high places of the Central Secretariat concept that had been previously accepted.

Organisation at the centre

In 1946, immediately following the re-establishment of Niugini civil government, J.R. Black, then an acting Assistant Director in District Services and Native Affairs, had pressed strongly for the adoption of central headquarters arrangements similar to those of British colonial territory secretariats. As a device for effecting some coordination at headquarters level of the policies of major departments - e.g. Agriculture, Health, Education - directly concerned with indigenous communities, the secretariat arrangement had much in its favour. While no panacea, it had proved to be a sound arrangement during the early stages of development when primitive indigenous communities are most vulnerable to departmental neglect or to being confused by conflicting plans and directions emanating from several different departments. A pre-requisite to the efficacy of the secretariat arrangement was that its generalist administrative key-men and their district representatives should be efficient and sympathetic to technical department problems. The first step towards a Niugini Secretariat was achieved with the promulgation of Circular Instruction No. C.A.7, issued over the personal signature of the Administrator on 11 October

1946, and addressed to 'All Members of the Public Service'. Its cumbersome title was 'The Organisation of Administration in Papua-New Guinea with special reference to the powers, functions and responsibilities of district officers in relation to the various technical officers posted to district staffs'. I understand that the document was mainly Black's drafting.

The purpose of C.A.7, as set out in the first paragraph of the six-and-a-half page document, was to show officers 'where they stand in relation to each other; to their appropriate Heads of Departments and to the chief executive, the Administrator, through the chief secretariat officer, the Government Secretary. It is designed to prevent any causes of friction and misunderstanding'. Paragraph 5 of C.A.7 stated that 'the District Officer exercises, in addition to any statutory, technical or agency functions, an executive control over all Public Servants and a general administrative and coordinating function in relation to all Departmental activities'. The supreme coordinating role of the District Officer in his district was reiterated in paragraph 7 and again in paragraph 8: 'It will be clearly understood that, in his District, the District Officer is the chief executive officer and is the co-ordinating authority responsible for the proper supervision of all administration activities. In this, of course, close liaison, tact and judgment are of first importance'.

Instruction C.A.7 had gone to some trouble to explain the reasons for the temporary supremacy of the generalist administrator:

Until the native community can protect its own interests, it is necessary to have all government activities coordinated by the officer who represents the Administrative Headquarters and who, because of his professional training, knowledge of, and association with natives, is capable of ensuring that the operations of any department shall not conflict with the overall policy of the Administration in respect of native welfare.

Other sections of the instruction defined the functions, powers and responsibilities of district officers, and laid down guidelines covering working relationships with technical departments and channels of communication.

A major weakness in the district administration arrangements laid down in C.A.7 derived from the characteristics of the district officers themselves. Regarded as a group, the 1946 incumbents - all pre-war officers - had been conditioned to a slow tempo of native administration geared primarily to law and order responsibilities, and mostly uncomplicated by the activities of technicians. In the post-war district officers' world of increasing technical department involvement in district administration and its increasing commercial activity, the unending flow of agency functions - most of which involved immigrants more than indigenes - and town management activities were the priorities. In 1960 few District Commissioners were disposed to deny the suggestion that they functioned mainly as town clerks and civic receptionists, and that 'native administration', of necessity, came third.¹

An oddity of C.A.7 that has been repeated many times since 1946 was its adherence to the myth that the administrative district is the basic unit for native development and welfare. In fact, under Niugini conditions, which exhibit wide variations in area situations, it is the *sub-district*, under an Assistant District Officer (later redesignated 'Assistant District Commissioner'), which is the 'native administration' unit. This factor increases the need for the senior generalist administrator in the district to ensure that there is consistency in policy.

Instruction C.A.7 remained untested because the required Central Secretariat organisation was never instituted. In late 1946 a detailed plan with diagram of a Secretariat organisation was prepared by J.R. Black and apparently was approved by an Inter-departmental Committee. The project was not popular with many Australian-trained public servants because of the lack of any comparable organisation in the Australian system. The central secretariat never became operational, however, because the Directors of the technical departments, particularly Dr J.T. Gunther of Public Health and W.C. Groves of Education, would not agree to their departments and departmental officers assuming subordinate roles in a structure dominated by 'semi-literate bush-

¹The suggestion was put to them individually by the 'Committee of Review' on the functions of the Department of Native Affairs.

whackers'.² In this situation personalities were probably more important than the protagonists' knowledge - or ignorance - of the issue.

The foreseeable results of an increasing tempo of uncoordinated departmental activities included a high incidence of inter-departmental squabbling and continuous frustrations in district and local government administration. A 1953 commentary on salient problems of native councils, written by me at the Minister's direction, stated that on the Gazelle Peninsula, at area council level, some policy integration had been achieved, but that 'in the long run, an integrated policy at the bottom is possible only if there is integration at the top'.³ Other paragraphs stated that

many of the difficulties and complaints that have arisen concerning the prestige of district commissioners are due to the fact that most of the D.C.s themselves either do not understand their essential [coordinating] role or lack the means and inclination to carry it out. ... Moreover, most of the Territory's technical staff are comparative newcomers [who] do not readily comprehend the administrative significance of ... a non-specialised department [that has no counterpart in Australia] with broad but vaguely defined functions.

After pointing out that 'several basic questions involving the dove-tailing of different internal departmental policies [including Police and Treasury and Lands Department] with the local government policy remain unresolved', this 1953 commentary stressed the 'urgent need to reorganise [the Administration's] central executive machinery and simultaneously to re-define DSNA's essential function as the rural branch of central administration'. It added that 'in the

²The phrase used by Dr J.T. Gunther when informally discussing the issue many years later. He added: 'We were all prima donnas in those days'.

³'Native Local Government', D.S. 14/11/6 dated 24 October 1953. [Reproduced in full as Appendix III of this volume.] The official allocation of roles for implementing the local government policy had been set out in 'Native Local Government Memorandum No. 1' of 4 February 1952, reproduced here as Appendix II.

Territory's present condition, a [Colonial] Secretariat type organisation of Central Administration is required to carry us over the next ten years or so. ... We have been too prone to follow Australian practices ...'. The Minister wrote that he regarded this commentary as a valuable document. He also continued to follow Australian practices.

No definitive action was taken to solve the central policy coordination problem. In 1959 an interdepartmental 'Committee of Review (Native Affairs)' was set up by order of the Minister for Territories (Hasluck). I was a member. This Committee's report included the following comments in a section headed 'The organisation required for rural Administration':

It appears to the committee that one of the cardinal weaknesses of the existing system of rural administration is that policy is being insufficiently integrated at central level before passing down to the districts. Territorial Administration practices regarding departmental policy promulgation have generally followed metropolitan Australian usage in that, to a large extent, the different Government agencies operate independently of each other. In the context of Territory conditions, this system is inadequate. Here, each of several departments is trying to effect changes in the ways of life of an inarticulate population which possesses little understanding of the actual character of the forces impinging on it, or of Government organisation, and has, moreover, sets of values markedly different from most of the policy makers. Such circumstances call for a much higher degree of interdepartmental policy co-ordination than is normally considered necessary in the administration of more advanced communities.

The Committee has concluded that lack of central Administration machinery adequate to process all departmental policies, and to effect the necessary day-to-day compromises between frequently conflicting departmental interests has been a major factor making for obscurity of the optimum role of the Native Affairs officer, particularly in the more advanced areas. It considers the

introduction of continuous policy processing machinery, particularly in regard to the planning and execution of certain aspects of the work of the Agriculture, Health, Education and Native Affairs departments, to be an urgent necessity, even if such arrangements imply some diminution of departmental headquarters' autonomy.

There was still no action. The introduction to the report of the No. 6 Course for Senior Officers on Community Development, held at ASOPA during October-November 1961, included the following:

The course is firmly of the opinion that effective community development in the Territory cannot be achieved without administrative machinery to ensure proper planning and departmental co-ordination at all levels. The course is further of the definite opinion that the present organisation and the variations currently being implemented in the top structure, with a reliance on Departments exercising the necessary initiative to get together at the planning and executive stages, are inadequate to ensure really effective community development.⁴

These views were developed at some length in the body of the Report.

Up to the advent of Ministerial government in 1972, which made the concept of a colonial secretariat redundant, Administration technical departments, with some occasional help from Canberra, successfully foiled each attempt by the generalist administrators to set up any central coordinating machinery adequate to do the job that virtually every official agreed should be done.

Organisation in the field

Co-ordination within the districts was no better, though Fenbury had tried to set up a model for it during his period on the Gazelle. As he wrote in November 1954:

⁴No. 6 Course for Senior Officers of TPNG, 1961. 'Report on Community Development', Introduction, page 2 para. 10. See Appendix IV.

'26. ... There the day-to-day implementing of native administration via council machinery has been largely in the hands of the Senior Native Authorities Officer, assisted by one or more Acting N.A.O.s (later A/A.D.O.s (N.A.)). ... The arrangement at Rabaul worked fairly smoothly because the District Commissioner was kept cognizant of all major activities in the native administration field and played an active part in all those issues where native affairs impinged on general administration or general policy questions.

'27. Economy in effort was effected, and differences over staff and transport utilisation were minimised by preventing any rigid barriers, as regards functions, arising between Native Authorities Officers and ordinary Field Staff Officers. Every Assistant District Officer, Patrol Officer and Cadet posted at Rabaul or Kokopo since 1951 has carried out some local government work as part of his normal duties. Native Authorities officers have fitted "general administration" duties into their native administration activities wherever it was administratively expedient that they should do so

'28. This relative smoothness in working arrangements has not been duplicated in other areas where the [sic] local government has been introduced. It has varied according to the attitudes (and understanding) of District Commissioners to the policy, and according to the personalities involved. I do not agree, however, that a fortuitous harmony of personalities was the dominant factor in the Rabaul situation ... The dominant factor, to my mind, was that the local policy lines were clearcut and had the active support of the District Commissioner' (Memorandum from Fenbury to R. Marsh, Department of Territories File V.852/6/4, 23 November 1954, written while on duty at Canberra on direct instruction of Minister.)

Fenbury repeatedly stressed the need to equip his own department's field staff in all areas, from the District Commissioner down, with a thorough grasp of the crucial role he envisaged for local government in native development and welfare - and he repeatedly deplored the failure of central administration to take in hand the concomitant tasks of training and indoctrination. A corollary of his views was that the nurturing of local government must be seen as an ordinary aspect of the work of generalist field staff, including District Commissioners - a point briefly touched on in the previous section. Already in September 1951 he was writing:

'13. ... It is somewhat disquietening to reflect that nearly two years after the proclamation of the Ordinance, and twelve months after the policy has been put into operation, there are very few field staff officers outside of headquarters and the Native Authorities Section with any but the haziest notions of the most significant step we have yet taken in administering the native population of this country. This despite the fact that native local government affairs must be ultimately handled by District Services officials as an integral part of normal district administration, and that the N.V.C. Regulations were framed with exactly that object in view.

'14. The original conception of the Native Authorities Officer's role has not materialised, for there has been no gradual assumption of supervisory responsibility for any council's affairs by the ordinary field staff of any of the three districts in which the policy has been applied. Admittedly staff shortages would have militated against such a scheme's smooth operation, but the fact remains that the very situation it seemed most necessary to avoid is rapidly developing; the local government policy is coming to be regarded by field staff generally as a fanciful super-structure that is being superimposed on a tried and true system of native administration by a handful of specialists with little else to do.

'15. I must admit to being out of sympathy with such an attitude. Firstly, the type of local government we are evolving to meet the particular facts of Melanesian social organisation is more strictly functional in character than any comparable system I know. There is no fancy work. It is a painstaking, even humdrum, step-by-step organisational and educational process, with the emphasis on getting things done. It is nothing but matter-of-fact native administration, based on commonsense and demanding energy, sympathetic good-humour and a little vision of its supervisors rather than any specialised knowledge. Secondly, it is incorrect to assume that, once the initial work has been done, each council will require the full-time attention of one officer. Such a concept is preposterous. ... The local government policy does mean, however, that a certain amount of native administration must be done regularly: the largest and least articulate section of the population must now be accorded its fair share of official time. It can no longer be a matter of village officials patiently hovering for hours around a District Office doorway, only to be ultimately

instructed to come again on the morrow.' (Fenbury to Director DSNA, 'Native Local Government', 9 September 1951.)

By 1953, at least, Fenbury's general point had become official orthodoxy. In November 1952 he had written:

'Native Authorities Officers are not specialists. Whilst the promotion of native local government organisation, and the guidance of the policy along lines most likely to prove successful in long range terms, necessitates familiarity with comparative practice - and mistakes - in other colonies, it is not in any sense a specialist aspect of "general" native administration, concerned only with political advancement. Unlike the Co-operative Registry, which is only concerned with certain aspects of native economic advancement ... the local government policy is essentially orthodox general native administration of a more systematic and progressive kind than hitherto practised in this Territory, and should not be regarded as a specialist technique. Performance of the official duties associated with implementing the policy involves use of all the statutory powers conferred on District Services Field Staff.'

Quoting these words with approval in a statement to the Legislative Council in mid-1953, the Administrator (D.M. Cleland) added that 'greater emphasis [would] be placed upon the responsibility of District Service personnel to watch, guide and control the affairs of Native Village Councils, their place in the native community and their gradual development'. He said that native local government would not be extended into new areas without advice and consultation with the District Commissioner concerned (Administrator's statement to Legislative Council 30 July 1953, quoting a Fenbury memorandum 'in November last').

The Administrator was informing the Legislative Council of action to be taken on the report he had commissioned from A.A. Roberts (A/DDSNA) on the reasons for the sometimes violent objections of Raluana villagers on the Gazelle to any move to bring them under local government councils (see chapter 7). Cleland announced a decision to disband the Native Authorities Section which Fenbury headed, thus endorsing a view which Fenbury and some of his colleagues in the field had long held, namely that the very existence of this 'specialist' section provided an excuse for DSNA field staff to wash their hands of responsibility for local government administration. In his memorandum of 9 September 1951 Fenbury had already posed the issue:

'23. If it is the Administration's intention to apply the local government policy to those areas of the Territory where the facts of terrain and population distribution make it feasible, then it will be necessary either to:

- (a) Considerably enlarge the Native Authorities Section, make it fully responsible for all aspects of the local government policy, and lay down the exact terms of its relationship to the District Commissioners ... ; or
- (b) Inform all field staff of the Administration's intentions, prepare annual district programmes of local government organisation, and issue explicit instructions to District Commissioners and their staffs regarding the rate and methods of the policy's application. ... In this case, the Native Authorities Section, whether or not it retains its separate identity, should continue to act as a small team of preliminary organisational specialists and advisers with responsibility also, perhaps, for training certain native councillors and all council Clerks.

'24. In my opinion the answer must be along the lines indicated in 23 (b), for the following reasons:

- (a) The local government system of native administration is not simply a matter of having councillors elected and then attending their monthly meetings. It is a comprehensive system of administration. As it develops it necessarily becomes involved with all aspects of native life. ... Inevitably the local government officer finds all major native problems channelling back to himself. ...
- (b) I cannot see how the first alternative mentioned (23 (a)) could operate for long without a considerable amount of friction arising between native authorities officers and ordinary field staff, for there would be no true basis for mutual co-operation in any such artificially dichotomous arrangement. ...
- (c) In other British territories where the administration of the native population is based on local government organisations ... the overall

responsibility for routine supervision of local government functions and finances is carried by ordinary field staff as part of their normal duties, which, incidentally, also include administering to the needs of non-native populations - and Headquarters staffs - far more numerous, and just as vociferous, as ours. It is also worth mentioning, perhaps, that, on the last occasion on which I extracted comparative figures ... the ratio of our District Services field staff to population (1:7,000) was most nearly approached by that of Tanganyika with 1:28,000. Any decision that District Services officers are basically unable to handle local government work as part of their normal jobs is, in my opinion, an admission that we have a sub-standard service.'

When the Minister (Hasluck) was told in mid-1953 of the proposal to abolish the Native Authorities Section he was somewhat sceptical. He thought the recommendations had been unduly influenced by the incidents at Raluana and that, whatever the organisational structure, there would be a continuing need (as Fenbury had suggested) for a nucleus of officers with special skills and responsibilities at least in the pioneering stages of setting up local government councils and to provide an ongoing advisory service. He also noted that the Territory Public Service Commissioner in recommending the new staffing dispositions had 'distorted' the findings of the Roberts report in suggesting that a principal contributing factor in the Raluana incidents was 'the incorrect and undefined official relationship' between the New Britain D.C. and the S.N.A.O. As the Minister observed, this was not among the four 'primary influences' mentioned in the report, and was placed fifth among the 'contributory influences'. Both Roberts and the Public Service Commissioner agreed that the specialist Native Authorities section suffered from being cut off from the guidance and control of the D.C. and from the broader experience of field staff generally. In his comments on the report Fenbury argued exactly the opposite. To him the disadvantages of the specialist section were that it seemed to absolve the D.C. and generalist field officers from accepting their proper responsibilities for local government; that it deprived them of the opportunity to gain experience and aptitudes which they needed to discharge those responsibilities; and that it hindered the integration of policies on local government, co-operatives and other matters into a general native policy.

Hasluck's immediate response to the recommendations was to have his queries sent to the Administrator with a request that both Roberts and Fenbury should comment in detail on his minute and on the future of 'native authorities' work in general. Fenbury produced an extensive memorandum which is quoted at various parts of this book and reproduced in full as Appendix III. It included a suggestion for a 'task-force' of officers specialising in the promotion of local government who could be assigned to work under D.C.s in particular districts as required. Fenbury's removal to Port Moresby in 1954 was part of a minor reorganisation in DSNA but the Native Authorities Section continued in existence until 1956.⁵

Co-ordination of the operations of technical departments (relatively new to Niugini in the early 1950s) through local government council work was, in Fenbury's view, as important at the local level as at the centre. Though he knew that in the long run effective local integration depended on co-operation at the centre, he achieved a good deal in his early efforts on the Gazelle, as reported in his memorandum of 9 September 1951:

'12. ... [E]ncouraging progress has been made in establishing relationships between councils and the technical departments - relationships on which the success of the policy, measured in terms of functions, ultimately depends. The position in regard to the departments of Education and Public Health is now quite satisfactory, and the way is clear for the training of council-selected students in re-forestation techniques. The weak link is agriculture, not because of any illwill by the Department concerned, but simply because the pre-requisite is an Agricultural Training School which the Department is not yet in a position to provide. ... The attitude of all technical officers at district level has been co-operative throughout, and some steady if unspectacular progress towards an integrated native policy - which is what the local government policy really implies - has been achieved.'

Although apparently with little effect on the policy-makers, Fenbury lost no opportunity of advancing two related

⁵Hasluck's minute is dated 4 September 1953. Fenbury's comments, 'Native Local Government', File 852/6/4, were dated 24 October 1953; paras 63-70, 79-81 and 92 are particularly relevant to the present topic (see Appendix III).

propositions: that each area of Niugini down to sub-district level at least had distinctive features and developmental needs, and that this required correspondingly varied plans for development, giving each specialised department its place in the area plan, and carried out locally under the co-ordination and direction of the District Commissioner. In Fenbury's opinion local government councils should share in the formulation of these local area plans and would be the most effective administrative medium for their execution with the help of the technical departments. In his memorandum of 23 November 1954, commenting on one of the periodical proposals for reorganising the DSNA department, Fenbury repeated these points:

'15. ... Every controlled sub-district known to me exhibits marked gradations in the advancement of its native groups. The Koiaris are far removed, except in miles, from the Motuans. The Gazelle Peninsula has in the Tolais the Territory's most economically advanced natives; it also contains the Bainings, the Timoips, Sulkas and the Mokolcols. The varying limits imposed on social and economic developmental rates - and also potentials - by varying terrain and population density factors alone, permits little hope of achieving uniform native advancement on a district basis.
... ..

'23. From personal experience it can be stated emphatically that administration through local government bodies is firstly, a matter of establishing the machinery and, secondly a matter of making it work as a medium for the different Government Agencies concerned in native administration. The two are closely linked for the machinery must be kept adjusted to its functions. Native local government is essentially a formula for achieving co-ordinated administration at native area level. The operation of the system is a continuous integrating process involving all departments concerned with native advancement. To a large extent the integration is effected through the annual financial programmes of local Government activities laid out in annual Council estimates. These are necessarily prepared in consultation with representatives of all interested departments, and they define the commitments and scope of activities of each department in each Council area over a twelve months' period.

'24. The role of District Services in this arrangement may be roughly tabulated as follows:

- (a) To educate the Councils - and through them the native public - into an attitude of active co-operation;
- (b) To educate technical department officers into realising that the Council's organisation and finances are primarily to assist them;
- (c) To keep area programmes balanced;
- (d) To organise and supervise the finance, supplies, transport and native skills required to implement programmes;
- (e) To supervise council elections, machinery, clerks, transport, maintain law and order, and adjust difficulties as they arise;
- (f) To assume direct responsibility for promoting any essential activities e.g. road maintenance, village water supplies, improved housing, construction of sportsgrounds, annual sports meetings etc. - not under the aegis of a technical department representative.

'25. It is surely clear from the above that unless a District Commissioner takes a lively interest in the series of annual area programmes involved in local government estimates he cannot effect co-ordination of the varied inter-departmental activities making for progressive native administration. Neither can he hope to maintain control over district native policy trends. Financial control is the key to policy control anywhere; in the local Government context it is also the key to integration.' (Fenbury memorandum to R. Marsh, Department of Territories File V. 852/6/4, 23 November 1954, pp.3, 5-6.)

Fenbury's memorandum went on to propose a detailed scheme of organisation reaching from area level to head-quarters level. This included a suggestion for 'Regional' or 'Provincial' Commissioners to 'assist the Administrator and Central Administration in the framing of native policy', and to 'be directly responsible to the Administrator for the implementation of policy decisions within their provinces'. The provincial commissioners would also take part of the burden of arranging staff postings, supplies and transport, and of policing expenditure and other routine matters, from the congested District Services headquarters, to leave them freer for important policy deliberations.

The actual organisational changes of the 1950s bore no relation to Fenbury's proposals, except for purely formal recognition of the role he envisaged for District Commissioners. For example the Administrator said in his statement to the Legislative Council on 30 July 1953:

Finally a word as to the positions of District Commissioners - ... i.e. their position in the Administration as a whole.

The success of the Administration of the Territory depends basically upon sound, virile and efficient district administration. Headquarters necessarily has its place and its responsibilities for policy and for general administration - but the real core of our work lies in the Districts.

As the Administrator is the representative of the Commonwealth Government and is responsible for the Administration of the whole Territory, so the District Commissioner is the representative of the Administrator, in his district and is responsible to the Administrator for the administration of that district. This responsibility includes the co-ordination and control of all activities within his district, no matter of what department or of what matter.

Similar statements frequently occurred in official memoranda and even in circulars to all Departments over the Administrator's signature. As Fenbury notes in a draft for this chapter:

In 1955 a rather amateurish attempt was made to overcome the problem of effecting policy integration at district level by taking the District Commissioner out of the Native Affairs Department, and placing him in the newly established Department of the Administrator. It failed, partly because of the D.C.s' own limitations, but mainly because there was still no central coordinating mechanism to curb the separate-empire propensities of many technical department officers. When conflict on a district issue occurred between a District Commissioner and a technical department head, the district technical department representative prudently obeyed his permanent boss in Port Moresby.

The need for integrating departmental policies at local area council level was among the points raised by C.R. Lambert, then Secretary of the Department of Territories, in a paper on 'Native Local Government' delivered to an ASOPA Senior Officers' Course in 1957. In comments on this paper (written at Lambert's request) I stated that 'many technical officers as yet have an inadequate appreciation that local government machinery is designed to serve their purposes ... In some cases there has been a tendency to regard the functionings of local government as amounting to little more than an attempt by Native Affairs to interfere in technical department activities. These difficulties have not been lessened by the prevailing lack of first-hand experience of local government exhibited by most District Commissioners, or by their departmental separation from Native Affairs in the last reorganisation. Officers responsible for initiating and supervising local government executive work are of necessity coordinators of inter-departmental policies at native area level'.⁶

In practice, the formal statements about co-ordination in the field never became operational because District Commissioners were never given either adequate relief from their ceremonial and other routine duties or specific preparation to enable them to play the role described, nor effective authority to ensure the 'co-ordination and control of all activities' within the district. What co-ordination there was arose rather from happy accidents of personality. In general the technical departments remained a law unto themselves in the field as at the centre.

⁶ Comments dated 5 November 1957, p.10 para.17. A.M. Healy, whose unpublished 1962 thesis on Niugini local government is often critical of the early council *kiaps'* paternalistic attitudes, quotes at length from this document's views of the co-ordination fiasco (Healy, 1962:654-5). Characteristically, he omits mentioning anywhere in his thesis that this 1957 document also contained what is probably the first official advocacy (pp.7 and 24) of an immediate 'common inter-racial franchise' for Niugini. The UNVM which produced the Foot Report recommending a 100-member parliament visited Niugini in 1962.

Chapter 6

The native courts issue

In his Introduction to Dr L.P. Mair's *Australia in New Guinea*, published in 1948, Lord Hailey commented that 'it is noteworthy that neither in Papua nor in the Mandated Territory was any formal provision made for the institution of Native Courts of Justice' (Mair, 1948:xvii). Formal provision was made in 1949. Twenty years later Niugini still lacked native courts in Hailey's sense of the term, but had just started to appoint indigenous magistrates to 'local courts'.

The courts issue prior to 1954

In his 1924 Report to the Australian Government Colonel John Ainsworth, a former Chief Native Commissioner of Kenya, recommended that village headmen (*luluais*) be entrusted by ordinance with wide civil powers and criminal jurisdiction in such matters as theft, assault, disobedience of lawful orders and the like (Ainsworth, 1924:17). At page 23 in the same report Ainsworth commented that 'in actual practice the *luluais* do sit in judgment upon those of their people who commit certain offences in their own areas ... such exercise of authority is acquiesced in by the Administration'.

In his 1924 *Notes on Colonel Ainsworth's Report*, J.H.P. Murray, then Lieutenant-Governor of Papua (later to become Sir Hubert Murray) expressed the predictable antipathy of the professional lawyer to the concept of courts presided over by village elders ignorant of British law and justice. He stated that he had 'never heard or read of any tribe in Papua by whom anything even remotely resembling an administration of justice has ever been attempted ...'. He predicted 'absolute failure' should any such system be instituted in Papua and suggested that if, in fact, native courts were feasible in the Mandated Territory, then 'I can only draw the conclusion that the natives of that Territory must be many centuries in advance of the natives of Papua'.

Murray, a former Chief Judicial Officer, did not comment on Ainsworth's descriptions of the exceedingly rough justice administered by some Niugini *kiaps* (Ainsworth, 1924:24-5). His distaste for legally endowing village headmen with any form of court powers was shared by successive Australian governments. When the Pacific War reached Niugini early in 1942, Ainsworth's recommendation for the introduction of a 'Native Authority Ordinance' had been officially buried for nearly 18 years.

As every bush *kiap* knew, part of the resulting gap at village level was filled by unsupervised and technically illicit institutions. Their membership, standards and jurisdictions varied widely. They were officially condoned providing they acted with reasonable discretion in fixing penalties and deciding what issues should be referred to the *kiap*. This need to hand down judgments generally acceptable to the villagers, and to report major crimes that had inter-group aspects, constituted some safeguard against the 'unofficial courts' becoming excessively harsh or corrupt. Even so, they often provided good pickings for 'big men' who had learned the art of managing *kiaps*. The existence of these tribunals was partly admitted in the Territory of New Guinea 1933-34 *Annual Report to the League of Nations*, which referred to paramount *luluais* presiding over informal courts that 'adjust minor matters, and local questions which are not sufficiently serious to bring before the Court for Native Affairs' (*Annual Report to the League of Nations*, 1933-34, p.25).

I have referred elsewhere to watching a pre-war Rabaul *kiap* approve a record of the judicial proceedings of a Tolai *kivung*. In other Niugini tribal areas, like most bush *kiaps*, I had encountered a spread of unsupervised 'courts', with virtually unlimited jurisdictions. Many were presided over by customary gerontocracies; others were conducted by *luluais* sitting alone, by catechists or pastors, and - on at least one occasion - by the corporal of my own police detachment. My personal observations of unofficial courts functioning in Papua were restricted to Hanuabada, in the 1950s. Local councillors proudly told me on several occasions that 'their court' pre-dated the white government. The Motuan Hanuabadans also asserted that, owing to widespread Motuan (?) influence, similar institutions were common throughout Papua. I do not recall any references to them in pre-war Papuan *Annual Reports*. [See a brief reference in *Papua Annual Report 1932-33*, p. 25. - R.S.P.]

In 1929 Sir Hubert Murray commenced appointing 'native assessors' to assist white magistrates in cases involving local customary usages and with this to receive some on-the-job training in British law and legal procedures. Thirteen years later, when civil administration in Papua was suspended in 1942, no assessor had been endowed with any statutory legal powers. It may be worth noting here that in 1959, after all post-war attempts to establish native courts had failed, C.J. Lynch, at that time Assistant Secretary (Drafting) in the PNG Department of Law, revived the matter of assessors with his departmental head in Port Moresby.¹ He already knew that in the Tolai Council areas, 'unofficial' assessors (mostly village elders) were often invited to sit with local government *kiaps* hearing cases at the fortnightly sittings held at the five council houses. With McCarthy's approval I had instituted this practice in 1951, shortly after the first Tolai councils were established. Local councillors had firmly endorsed the idea as an interim measure. At that stage I still optimistically assumed that ultimately the battle for 'native courts' would be won. There was also a need to mollify many senior villagers. Influential elders had openly grumbled to me that prior to the establishment of these newfangled statutory councils, which did not wield court powers, 'their' *kivung* had administered most local justice.

The first post-war discussions on native courts for Niugini in which I was involved occurred during the few weeks that I spent at the Army Directorate of Research at Canberra in October 1945. Dr L.P. Mair, an 'Africa specialist' on loan to the Directorate from her (then) position as Reader in Colonial Administration at the University of London, advocated a Niugini native courts system based on the British African 'Native Authority' pattern. Niugini's general lack of hereditary chiefs was recognised as a problem facing this approach. Mair's general thesis was strongly supported by Dr H.I. Hogbin. His pre-war observations at Guadalcanal (British Solomon Islands) and his 1944 study of leadership at Busama, near Lae, had convinced him that a Niugini Native Authority system adapted to Melanesian social structure was desirable and was feasible. It was Hogbin who fired the first public shots in the battle for a Niugini 'village courts' system (Hogbin, 1945:61 and 1946:38-66). Both Mair

¹Memorandum to Secretary for Law: 'Assessors for Courts for Native Affairs and Native Matters', dated 17 March 1959, reproduced in part below as Appendix V.

and Hogbin appreciated that varying periods of culture contact and the rapidly changing social and leadership patterns in Niugini societies affected by the Pacific war necessitated legislation that would allow flexibility in such delicate matters as the minimum standards of court records to be kept and the combination of judicial and executive functions in a single authority. Their neglect to emphasise this aspect may have been a tactical omission. In the event it provided some useful ammunition for those ostensibly opposed to any system that deviated from the training, principles and procedures deemed to be implicit in the administration of British justice. Nevertheless, it was mainly due to the efforts of Mair and Hogbin, working through the Directorate to a sympathetic Minister for Territories (E.J. Ward), that the Australian Government's Papua and New Guinea Act, when it finally appeared in 1949, included provision (section 63) for 'Courts and tribunals, including native village courts and other tribunals on which natives may sit as adjudicating officers or assessors'. This apparent victory was deceptive.

As was indicated in chapter 3, I was not personally involved in the native courts campaign until December 1949. In that year the Papua New Guinea Act became law. It was only when I had access to the Port Moresby files that I learnt clearly that the first - and probably decisive - battles to legalize villager layman tribunals had been waged more than three years before the Act came into force. It may be of interest to set down the circumstances of Dr H.I. Hogbin's 1946 discussions with the Niugini Administration as recapitulated by the most important professional lawyer adversary of native courts, Chief Justice Phillips (later to become Sir Beaumont Phillips). In a characteristic eight-page letter written in 1955 to the then Administrator (Cleland) when the revived native courts policy was clearly moribund, Phillips stated:

In or about September, 1946, my brother Gore and I and senior officers of the Public Service were invited by Colonel Murray to attend a meeting at Konedobu at which he introduced Dr Hogbin as an emissary who had been sent by the then-Minister (the Honourable E. Ward) for the purpose of explaining a scheme that Mr Ward had decided upon for the establishment, without delay, of Native Village Councils and Native Village Courts. Colonel Murray made it clear that, as the

Minister's decision was one of policy, there was to be no discussion about the desirability or undesirability of the policy but that suggestions might be made as to how best it could be implemented (Phillips to Administrator, letter of 24 November 1955. Crown Law file R.41/451/55).

In the event, and as stated in the same 1955 letter, the Chief Justice was given the opportunity to express his views on the policy on 30 September 1946, when Colonel Murray requested comments on draft bills 'that Dr Hogbin had had prepared for Ordinances relating to Native Village Councils and Native Village Courts'. In a six-page letter to the Administrator, dated 11 October 1946, Phillips cautiously endorsed the concept of statutory village councils that would be 'subject to the control of the Administrator', but vehemently opposed supervised native courts manned by officially appointed villager laymen. But in this initial letter to the Administrator the Chief Justice omitted mentioning that these same traditional institutions had also wielded 'judicial' authority for a very long time. The need for haste, and the Chief Justice's anxiety to safeguard the majesty and standards of British law, may have contributed to this slip of memory. Phillips did, however, state (paragraph 3) that pre-war 'attempts to entrust the [non-statutory] councils with magisterial duties had had to be abandoned because the councils had shown themselves as yet incapable of dispensing justice in the way we feel that justice should be done ...' This statement was not in accord with what I had seen of the operations of the Matupit *kivung* in 1937, nor with what had been common knowledge among the pre-war *kiap* ranks.

The Chief Justice's offensive then switched to the dangers of giving official court powers to laymen:

... I understand that it is intended, if the proposed Ordinance becomes law, to set up some Native Courts right away and to give them a measure of both civil and criminal jurisdiction... I earnestly suggest to Your Honour that the proposed Native Courts should not be established until the natives who will constitute these Courts have had the instruction, training and experience necessary to fit them to conduct these Courts and to administer justice in a proper way.

In other paragraphs of this commentary the Chief Justice emphasised the need for native courts to adhere to the rules of evidence, which were not applicable to Courts for Native Affairs presided over by *kiaps*. He stated that 'natives accept the most preposterous and fantastic stories without question ... This propensity is not limited to the rank and file of natives but is equally prevalent among the leading and influential natives ... who would be drawn on when making appointments to a Native Court'. In his final paragraphs the Chief Justice suggested an assessor training system.

Colonel Murray's response of 21 November 1946 suggested reconsideration by the Chief Justice. It was accompanied by extracts from the writings of various African authorities, including Lord Hailey's *African Survey*. There were also memoranda from Dr Hogbin and Mr J.H. Wootten who at that time was teaching law at ASOPA.²

Faced with this counter-attack, and believing 'that Mr Ward's decision was a *fait accompli*', Phillips, as he himself stated (page 4) in his 1955 letter to Cleland, 'used the diplomatic language of suggestion' in consolidating his opposition. In the process he became more tortuous. The general gist of his 2 December 1946 letter to the Administrator was that as 'a change or at least a re-orientation of the original proposal' now seemed to be contemplated, it opened the way for 'first arriving at clear and well-understood decisions on important preliminary questions'. He inaccurately referred to the African native courts described by Lord Hailey in his *African Survey* as 'a gradual development of native tribunals mainly from within [Phillips's emphasis] whereas the scheme of the draft [Niugini] Native Courts Ordinance appeared to be one of establishing statutory Native Courts from without'. He indicated that if there had to be Niugini Native Courts, the approach of 'giving official recognition to, and developing, existing native tribunals' seemed a less hazardous course than 'establishing such courts from without'. He counselled hastening slowly.

² Now Mr. Justice Wootten of the N.S.W. Supreme Court. In 1949 Wootten told me that he and James McAuley (then a lecturer in Colonial Administration at ASOPA) had been involved in the preparation of Colonel Murray's 21 November 1946 letter to Phillips and the associated documents.

For all the 'diplomatic language', Phillips's letter of 2 December 1946 left little room for doubt regarding his continuing opposition to any system of 'official' native courts. Perhaps its most revealing aspect was that the Chief Justice now conceded that unofficial village courts had existed in Niugini 'from time immemorial'.

Now, as already mentioned, there can be no doubt whatever that the village communities in New Guinea have had their own ways of settling or attempting to settle disputes from time immemorial; and there can be no doubt that these persist even today, despite the fact that our system of courts have [sic] been long in the land. I have always understood that a common native way of settling or attempting to settle disputes is by debate and discussion in an assembly or council of village elders or 'big men' at a village meeting house, and that the same assembly or council usually looked after the general management of village affairs also. (But it is by no means unknown for a strong chief to appoint himself a judicial committee of one and to arrogate to himself entire judicial power over his village.) These arbiters may be called 'village courts' but, as their procedure differs so greatly from the court procedure we ourselves have become accustomed to, and in order to avoid confusion, I intend to refer to them hereinafter as 'village tribunals' (Chief Justice Phillips to Administrator Colonel Murray, letter of 2 December 1946, 'The Proposed Native Courts Ordinance', pp.5-6).

In the next paragraph of this letter the Chief Justice expressed his awareness of 'a village tribunal's occasional desire, for divers reasons, to deal with a grave criminal offence itself and keep it from the Government'. On this he commented complacently that, 'as the saying goes, murder (and lesser crimes) so often "will out"'. .

Phillips discarded his diplomatic language in commenting on the 'Note by H. Wootten'. He referred to it as 'so jejune a contribution that I have had some doubt whether it warrants comment'. The Chief Justice seemed to have been particularly riled by Wootten's remark that 'intolerance (usually based on ignorance) is traditionally characteristic of the attitude of the English lawyer to systems that deviate

from the hallowed paths of British justice'. This from a barrister was both heresy and a serious breach of union rules. The Chief Justice wrote that 'with all respect due to Mr Wootten, it is suggested that the reflection referred to in his refreshing gaucherie is superficial, long since outmoded and does less than the merest justice to the English lawyer' (Chief Justice Phillips to Administrator Colonel Murray, letter of 2 December 1946, 'The Proposed Native Courts Ordinance', p.10).

In fact, disdain for sound but technically deficient decisions of Native Authority Courts shown by many of the English lawyers who then comprised the High Court benches of British African territories was still uncomfortably evident after 1946. As Wootten, at any rate, knew, it had led to the Government of Tanganyika Territory establishing an appeals tribunal divorced from the High Court. The Chief Justice concluded his lengthy letter (11 foolscap pages) of 2 December 1946 with a further plea to the Administrator for 'careful and full consideration of the whole problem ...'.

Consideration of the native courts 'problem' continued sporadically during the next ten years. In a personal note sent to me at ASOPA in September 1947, Dr J.T. Gunther informed me that a 'Native Authorities' system for Niugini, including 'Native Courts', had been discussed some time previously at two meetings of the new Interdepartmental Committee on Native Development and Welfare. Gunther, the Committee chairman, stated that no firm conclusions had been reached at these meetings because most of the participants 'didn't know anything about the bloody issues'. A subsequent comment in the same note indicated that Dr Hogbin and W.C. Groves (the then Director of Education) had attended these meetings and had favoured the establishment of 'village courts'; and that W.R. Humphries vigorously opposed the idea. Shortly afterwards, I was in Niugini for a few months, and on Gunther's invitation I attended two other meetings of this short-lived committee. They were not fruitful. My most enduring memory of these sessions is that each of the several departmental heads present was primarily interested in defending - or enlarging - his particular departmental domain.

In March 1947 the Director of DSNA issued a Circular Memorandum which indicated that the policy of developing councils and courts was still viable but that insufficient care was being taken in trying to adapt East African

situations to Niugini conditions. From my *kiap* colleagues' attitudes, my subsequent conclusion was that this circular amounted to a window-dressing effort of dubious sincerity. It stated in part that 'effective local government and small courts for village communities will be gradually built up on the indigenous authority where it has survived [or] on a committee of the dominant people who regulate village life'.

[At this point Fenbury's finished typescript breaks off, and the editor continues the narrative.]

The draft Native Courts Ordinance, 1954

Chapter 3 summarises Fenbury's 1949 arguments for 'separating the local government executive from the local judiciary ... right at the beginning', and for promulgating local courts legislation simultaneously with the Native Village Councils Ordinance of that year. The chapter also notes the lack of any action on village courts at the time. In 1952 and 1953 there were requests from the Territory for a ministerial decision on village courts policy (cf. Appendix III fn. to para. 70), but the minister of the day (now Sir Paul Hasluck) has stated that none of them was brought under his personal notice until January 1955. He then received a draft bill for a native local courts ordinance, which had been adopted by the Executive Council of the Territory for submission to the Legislative Council if and when the minister approved. This draft is reproduced below as Appendix VI. Evidence of indigenous perception of the need for it includes the following extract from an 'Address to His Honour, the Administrator ... from the combined Tolai Councils' dated 9 March 1953.

One other thing we talked to you before Mr Cleland, was the Native Courts Ordinance. All the time there are many small troubles about ground and women and trucks and stealing and drinking, but many people do not like to go to Rabaul because it is a long way and they have to wait too long and witnesses do not like to come. Before the war the Kivungs heard some courts, but Mr Fienberg^[3] has told us that the Kivungs did this outside the law,

[3] D.M. Fenbury adopted that surname in 1960, in place of the family name of Fienberg by which he was known until then. To avoid confusion the more recent name is used throughout this book, except in a handful of quotations. - R.S.P.]

and that the Councils can not hear courts without a law of native courts. We know this Native Courts Ordinance is ready and we would like to ask when the Government is going to pass this law.

In a departmental minute dated 20 June 1972 Fenbury recalled that the 1954 draft envisaged the local courts 'as catering only for indigenes', and went on:

'6. The proposed courts would have been an integral part of the country's judicial system. Their membership would have comprised of [sic] panels of reputable village 'big men', but beyond stipulating that the courts would be formally established by warrant, the draft Ordinance left the method of selection and appointment of court members, and the administrative arrangements to be set out in the regulations (which, of course, were never drafted).

'7. Our general approach was that panels of suitable candidates would be proposed by local government councils; that the court members would be appointed (not elected) to hold office for set periods; that the courts would exercise limited criminal and wide civil jurisdictions; that the incidental administrative and accounting work flowing from the operation of the courts would be handled by the offices of the councils in whose areas the courts operated.

'8. ...

'9. It will be noted that the draft Bill bars professional lawyers from appearing in these courts and provided safeguards against a native court's findings being upset by superior appellate courts on technicalities, as long as 'substantial justice' had been done. As was the case with courts for native matters and courts for native affairs, we did not envisage that the English Common Law rules of evidence would be applicable in these courts.'

The minister did not approve of the draft ordinance, and set out his objections in a long minute to the head of the Department of Territories dated 27 January 1955. This was transmitted in due course to Niugini, where Fenbury, upon instructions, submitted to the Assistant Administrator the detailed commentary which follows. For the convenience of the reader Fenbury's summary of Hasluck's objections, attached as an appendix to his commentary, is reproduced first. (For the full text of Hasluck's minute see Hasluck, 1976:186-91.)

'The Minister's objections may be summarised as follows:

- (1) No facts or arguments have been presented to support the idea that special Native Courts should be added to the judicial system of the Territory.
- (2) Insufficient attention has been given to the basic question whether or not a separate system of Courts for natives is really necessary.
- (3) If a Native Courts system is necessary, is it wise?
- (4) The proposals (i.e. the Native Courts system) may undermine the principles of the administration of justice which the Australian Government commonly accepts.
- (5) The matters with which the Courts will deal are those arising in the village where the Court sits and to which only villagers are parties.
- (6) The Courts and the officers supervising them have considerable liberty in the methods they use, and the rules they disregard, provided that "substantial justice" is done.
- (7) The present draft is unacceptable because it does not lay down precisely the main provisions in regard to the Constitution of the Courts, their jurisdiction, their powers and procedures. It is law-making by regulation, which will leave the administration of justice at the mercy of civil servants.
- (8) The draft subordinates the Courts to administrative convenience to such a degree that the present proposals amount to little more than an elaborate sham. That is, the proposed system merely creates a device which under judicial guise is intended to serve administrative convenience.
- (9) Flexibility in the administration of justice to primitive populations is not to be confused with sub-standard justice "for natives only".
- (10) The introduction of a system of Native Courts with different procedures to existing Territorial Courts will make for two systems of justice.

- (11) The administration of justice must be safeguarded from any influence by the executive branch of government. The proposed system is wholly at the mercy of the Executive.
- (12) The individual native is more likely to receive justice through an extension of British Courts than through a system of village courts supervised by Administrative Officers.
- (13) Courts of a representative character are almost certain to make for bad justice.
- (14) The political education of the natives should not be considered as a factor in the establishment of Native Courts.
- (15) The idea of the Queen, as someone above government, being the source of justice must be constantly impressed on the native population. A Native Courts system will retard, not advance, the education of the natives in this regard.

'The Minister has also made the following observations:

- (1) Existing Territorial Courts, when dealing with native cases, do take cognizance of the existing tribal institutions, customs and usages when they are evaluating native evidence and particularly when they are deciding a penalty or an award.
- (2) Certain Ordinances contain provisions to protect native interests. This method of respecting native custom and usage might be extended.
- (3) Administration Officers commonly mediate to achieve rough justice on small matters of local and domestic concern. The continued use of administrative methods of establishing and maintaining order in the village is necessary in the early stages of contact, but should not be formalised into a judicial system for use in more advanced communities.'

... ..

'As instructed, the following comments are submitted on the Ministerial Minute (folios 64-68) covering the Draft Native Courts Ordinance, 1954.

'2. The Minute contains fifteen objections to the present draft Ordinance (see Appendix "A"). There is some synonymy, and several of them derive from what appears to be a misunderstanding by the Minister.

'3. What seems to be a fundamental misconception is summarized in the statement made by the Attorney-General in 1950 (quoted in Para.3 of the Minute) that the proposed Ordinance "involves a completely new departure in the Administration of justice in the Territory". With all respect to the Attorney-General, his observation is not in accordance with the facts.

'4. The proposed native courts DO NOT involve any radical departure from the existing rules governing conduct of Courts for Native Matters (Papua) and Courts for Native Affairs (New Guinea) - the courts which account for at least 80% of the total cases heard by Territorial Courts. It appears that neither the Minister nor the Attorney-General is aware that these courts are an integral part of the judicial system of the Territory, and that, in the interests of British justice they operate under comparatively informal procedure and without a strict application of the elaborate rules of evidence built into English legal procedure. The fact we face, however distasteful it may be to the professional legal mind unversed in the realities of native situations, is that in a primitive context English law and British Justice are not synonymous terms.

'5. That the Minister has a misconception regarding the character and status of the existing Native Affairs Courts is clearly apparent in paras. 16 and 18 of his Minute.

'6. In para. 16 the Minister states that, whilst he has no objection to "rough justice" being administered for administrative reasons by field Staff Officers "using good sense rather than a legal form" in the initial stages of contact, "it is a different thing to formalise the process into a system of established judicial bodies administering their own system of law".

'7. In para. 18, the Minister again recognises the need for these unofficial "courts" in the early phases of contact, and states: "but these should be clearly distinguished as

serving the purposes of Administration and not as part of the judicial system ... the need for an Ordinance for this purpose is not seen, nor is it envisaged that such 'courts' could exercise the same powers of [sic] the established Courts of the Territory either in civil or criminal cases".

'8. To clarify this aspect of the matter, the following points are tabulated:

- (a) As mentioned above, Courts for Native Matters and Courts for Native Affairs, established on a District basis by Proclamation, are an integral part of the judicial system of the Territory. Appeals from their decision lie to the Supreme Court of the Territory.
- (b) These courts exercise limited criminal and very wide civil jurisdiction over natives, and account for more than 80 percent of the total cases heard in all Territory courts.
- (c) The jurisdiction, powers and procedure of these Courts are laid down in the Native Regulations (Papua) and Native Administration Regulations (New Guinea). The procedure is extremely simple, and, by comparison with Supreme Court procedure, informal,⁴ but the principles which are the essence of British justice are strictly preserved (e.g. in criminal cases the accused must understand the nature of the charge or complaint; he must be asked how he pleads; evidence against him must be given in his presence and must be understood by him; he has the right to cross-examine witnesses, and to call witnesses on his own behalf; the magistrate is bound to assist the accused in every particular relating to his defence and before convicting must be convinced of an accused person's guilt beyond all reasonable doubt). From the viewpoint of justice, not legal procedure, I believe that a properly conducted Court for Native Affairs is as fair as any court in the world.

⁴It should be noted, however, that such a widely experienced jurist as Judge Gore frequently sees fit to conduct Supreme Court proceedings involving natives along simple and relatively informal lines.

- (d) Administrative officers of Native Affairs (Field Staff) are normally appointed Court members in their second year of service by notice in the Government Gazette. These officers perform the bulk of the Territory's lower court work.
- (e) There is no legal sanction within the Territory for the dispensing of "rough justice" by Field Staff operating in primitive areas. All judicial acts carried out by Field Staff must be in accordance with the Native Regulations or Native Administration Regulations. It is a fact that in arbitrating in petty civil disputes Administrative officers sometimes do not formally open a court, but their power to arbitrate in even the most trivial matter derives from their court membership. All criminal cases must be recorded in the prescribed manner and are open to scrutiny by the Secretary for Law.
- (f) The prescribed procedure of these courts confers wide discretionary powers on Court Members in regard to preliminary enquiries, initiation of prosecutions, the calling and examining of witnesses, etc. In British metropolitan countries (but not all European contexts) where there is an elaborate police organisation, and a population generally aware of the principles on which Law is based, magistrates are not concerned in many of these activities. In the New Guinea native context we face the constant tedious task of educating a politically fragmented people, accustomed to settling inter-group disputes by force, into the concept of a universal Rule of Law. It is not a matter of subordinating Justice to Administrative expediency, but of laying the foundations for the general acceptance of British justice; of replacing the notion of the private injury with that of the public offence; of instilling the idea that all Administrative acts have a legal basis. For the Rule of Law to be accepted, it must be understood. A more strict application of English Court procedure at this stage of native evolution would not make for better understanding, and it would not make for better justice.

(g) Except in certain townships, the officers charged with administrative responsibility for an area are normally the officers who also administer justice. This situation applies not only to courts handling native matters. It applies also to District Courts and Courts of Petty Sessions with jurisdiction over non-natives. This combination of executive and judicial functions in the one category of official is common throughout the British colonial world. In the native sphere it is not simply a matter of expediency. It makes for better justice.

'9. The above points have been listed to show that the proposed Native Courts system is not "a completely new departure in the Administration of justice" but an extension of the prevailing subordinate court system. The major change envisaged by the legislation does not relate to the procedure of these courts, but to their composition.

'10. This proposed extension of the Territorial Judicial system is, in my view, both necessary and wise. It was stated above that Courts for Native Matters and Courts for Native Affairs account for some 80 percent of all issues coming before Territorial Courts. But nevertheless the existing system must be regarded as having failed to fulfil its basic purpose, that of bringing British justice to the mass of the population. Its failure is demonstrated by the fact that the total causes that come before all Territorial courts are only a fraction (perhaps 25%) of the total causes that arise. The other 75% are heard by illicit native tribunals whose activities are not under any scrutiny whatsoever. The primary purpose of the proposed legislation is to bring these tribunals into the orbit of the Territorial judicial system.

'11. It is futile to say that these tribunals must be stamped out. In the one area where we have actively discouraged them - the Council areas of the Gazelle Peninsula - we have tried to bridge the gap by instituting a system of Ten additional court days per month at centres staggered over the area (one per fortnight at each of five council houses) in addition to the normal daily Court work in Rabaul and in the field. This arrangement is extremely vulnerable to staff dispositions. But even at that the illicit Tolai tribunals continue in an abated form. We tried to discourage them in Council areas because the local Government system is designed to teach the population to conduct its affairs

in accordance with the rule of law and there is ample evidence that the unofficial "Kivung" courts mainly served to profit the "magistrates". When local Government was first established there was a strong possibility that the Councils (on whom the Local Government Councils Ordinance confers police, but no judicial powers) would follow the old "Kivung" tradition and set themselves up as de facto Courts. This had to be guarded against. The situation is rendered somewhat ironic by the fact that the Tolais are one of the few tribal groups in the Territory who traditionally had an inter-group law enforcement organisation in the Tumbuan Society. It was not above occasional blackmailing. This Society was outlawed during the German regime, mainly on politico-religious grounds.

'12. In other Council areas unofficial courts flourish. Mr. Murray Groves, an anthropologist who recently completed several months' work amongst the Motuans, has informed me that the Hanuabada Council regularly conducts secret court sittings whose expeditious discharge of business in his (possibly biased) opinion compares favourably with the average Administration officer's court. These courts are conducted within a few hundred yards of Central Administration and within a mile or so of the District Court and a full-time European Magistrate. Only one inference is possible.

'13. In areas not under local government councils (i.e. over most of the Territory), illicit tribunals are either tacitly, or (in most cases) actively, encouraged by Administrative officers. For half a century luluais and village constables have been permitted to exercise what is deemed to be a customary right to settle minor disputes within the village. The decisions reached are, in some areas, subjected to the approval of a patrol officer on his periodic visits, in other areas not; the degree to which these "courts" work openly or in secret varies according to the attitudes of different officers. References to such tribunals are common in Patrol Reports.

'14. In other words, there has been a sort of de facto recognition by the Administration of the principle that every group necessarily has - or had - some form of traditional magico-judicial machinery for settling disputes within the group: this is obvious enough, for without such an arrangement the social cohesion on which the very existence of the group depended could not have been maintained. In Melanesian society, politically fragmented as a result of broken terrain,

the typical group is a small village governed by a gerontocracy and intermittently feuding with its neighbours. Recognition of the luluai's right (i.e. the right of the gerontocracy, of which the luluai may or may not be a member - depending on the wisdom used in his selection) to settle petty disputes has been mostly a matter of local expediency without governmental endorsement. With difficult communications, single village administration, and patrols averaging at best one visit per year, the continuing jurisdiction of local tribunals is as inevitable as their uncontrolled evolution is administratively undesirable.

'15. With the increasing "westernisation" of native society the picture changes rapidly. People move about more; group interests widen; the authority of the gerontocracies declines; leadership passes to new classes of men. These may be officials, local entrepreneurs, Mission teachers, clerks, police N.C.O.s or simply adroit rogues with a flair for demagogy. The number and variety of causes, both civil and criminal, increases sharply. Unofficial "courts", presided over by the new leaders or any combination of these and the old men, extend their jurisdictions from single villages to village groups. Depending on the amount of Administrative attention paid to the area, the matters which these tribunals assume to handle include anything from marriage, land, and native business partnership disputes to theft, assault, adultery, non-attendance at church, grievous bodily harm and even manslaughter or murder.

'16. Such tribunals, in my experience, exhibit two common characteristics: they work on a principle that compensation affords a means of redress for all types of wrong doing (i.e. all crimes are treated as private injuries to individuals, not offences against public order); and their members extort payment from all parties appearing before them. I would not regard them as being, in general, viciously corrupt, and they appear to fulfil a native want.

I have not the slightest doubt that reputable leaders such as Mr. Simogun, MLC, regularly "hear courts".

'17. Cases which the tribunals cannot solve, or in which the parties will not accept the tribunals' decisions, or which are thought to have "leaked out", or which involve a split along village lines, are brought to the Territorial Courts.

'18. That is the general situation prevailing, and to my mind it constitutes an unanswerable argument in favour of establishing official native tribunals. I have emphasised it in earlier submissions.⁵ Administering justice is inherent in the responsibility to govern. We cannot pretend to be governing the Territory when the bulk of the population looks for justice to an unknown number of unauthorised and unsupervised tribunals, administering an undefined body of law, and open to what, in British eyes, are the grossest forms of graft. Any system of supervised tribunals, with provisions for review and appeal, is preferable to what we have at present. Official supervised tribunals based on popular acceptance and with a vested interest in preventing others from usurping their judicial authority, are the only effective counter to the undoubted popular support which most illicit tribunals now command.

'19. This latter fact requires emphasis, for the growth of the illicit tribunals cannot be entirely explained in terms of bad communications, insufficient Territorial courts, or the natural evolution of gerontocratic judicial procedures. To the native mind, Government courts are alien institutions in which natives have no part except as plaintiffs, defendants or witnesses. In Melanesian Pidgin it is always "Court belong Government" as opposed to "Court belong mipela Kanaka"; "Law belong Government" as opposed to "Law belong Kanaka". Even the relatively informal Courts for Native Affairs (Matters) presided over by White Magistrates are basically regarded as alien. The attraction of the illicit native tribunals, apart from their accessibility and the feeling that natives are handling their own affairs, is that a native can tell his story in his own way, and incidental points relating to intricacies of local etiquette or local customary usage do not have to be tediously explained to an uncomprehending Bench.

'20. The introduction of legally trained native magistrates - even assuming it was possible to do so within a foreseeable period - would in no wise mitigate the alien character of the courts over which they presided. The German Administration in East Africa (later Tanganyika Territory) established a hierarchy of subordinate native magistrates (the Akidas) and suppressed the indigenous African institutions. Thirty years later the British found that the traditional authorities had never really succumbed, and still commanded popular support.

⁵Ref. 11-3-66 of 23/4/54.

'21. In passing, I do not understand the Minister's comment (para. 13 of the Minute) that Native Courts should not be representative in character; if by this he means subject to election, I agree entirely. If, however, he means that such courts, if established, should be constituted without any regard for the acceptability of their members to the people they are intended to serve, then I think both English and the colonial history proves he is mistaken.⁶

The draft ordinance leaves the constitution of Native Courts to the Regulations. The Minister has expressed very firm views (para. 5 of the minute) on this point. My comment is that, having regard to the diversity of conditions in different native areas, any attempt to "lay down precisely the main provisions in regard to the constitutions of the Courts ..." in the Ordinance would be foredoomed to failure. I do not think it could be done by Regulation either. As in other Territories, and as is the case with Councils in this Territory, the constitution of each Court would need to be left to the Proclamation or Warrant establishing it.

'24. As Senior Native Authorities Officer, I have repeatedly advocated, in the interests of good government, the need to establish and test a native courts system. It is therefore somewhat mortifying to find the Minister at this stage disposed to regard the proposed legislation as being, perhaps, nothing more than a "sham" whose real purpose is merely to serve administrative convenience. (Para. 6 of the Minute refers.) The Minister's query on this aspect

⁶I hesitate to tackle the Minister on a question of history, but I think he will agree that the defects of autocratic mediaeval courts and changing public opinion were the historical causes for the gradual "democratisation" of English courts, as exemplified in trial by jury. In his "Constitutional History" Stubbs remarks of the Norman Kings that "It was mainly for the sake of the profits that justice was administered at all". A few centuries later there were legal arguments designed to bring the King within the scope of the Common Law - commencing with the dictum that the King rules "under God and the Law". There was more active argument by Coke and Cromwell and ultimately the emergence of Parliament as sovereign. With the effective eclipse of the King's executive power except in name, so did the King's peace become the people's peace, except in name.'

apparently arose from what appeared to him an over-elaborate system of review and appeal conducted by Administrative officers. As the Administration has an overriding responsibility to see that justice is done, and the whole policy can only be approached along empirical lines, I assume that the Minister objects more to the part it is envisaged Administrative officers will play in the appeal and review system than to the system itself. The system must be largely handled - at low levels - by Administrative officers, because these officers, by virtue of their judicial functions as Court members and Justices of the Peace, are the logical persons - and the only persons - in whom to invest these powers. The proposals are in line with comparable legislation in British colonies. It could hardly be contemplated that appeals should be from Native Tribunals direct to the Supreme Court.

'25. I should also point out that if we were interested only in Administrative convenience, our easiest course would be to continue as at present - simply to pretend that the network of illicit tribunals does not exist. The introduction of a Native Courts system administered by natives will in the first instance involve considerably more work of a decidedly tedious character. As S.N.A.O. I should like to assure the Minister that if I had not become convinced of the pressing need to ascertain the "workability" or otherwise of a supervised native tribunals system, I would be the last person to advocate its introduction.

'26. I am in emphatic agreement with the Minister that our thinking about native courts should not be influenced by U.N. Trusteeship Council pressures. So far as I am concerned, the case for Native Courts, like that for Native local government stands or falls on its merits as a means of achieving good Government in Australia's long term strategic interests. Considering U.N. attitudes is not within my province.

'27. The Minister has frankly admitted to having prejudices on the whole subject. It would appear that uppermost amongst these is his conviction that the judiciary must not in any way, or under any circumstances, be subject to the influence of the executive. As a theoretical principle that is excellent; as an edict to be applied to the circumstances of government in primitive dependencies it is impracticable in a tribal context, cannot make for better justice, and must be regarded as an evolutionary goal, not a starting point.

On the Minister's reasoning, the accusation of "sham" could surely be levelled with greater validity at the existing Courts for Native Affairs (Matters) than at the proposed native tribunals, for in the former executive officers must frequently enforce their own executive acts by judicial process; in the latter they would be judicial officers reviewing legal processes initiated by others and arising from executive acts with which they were less concerned administratively.

'28. The Native Courts legislation is intended to cover a period of transition which, other things being equal, will probably extend over the next fifty years. As native society evolves, so will the legislation be amended to fit the changing situations. Granted that the legislation is necessary, it is also designed to educate the native population into the principles of British justice by giving them an active role in its practice. They learn by doing, under our tutelage. Precisely the same principle operates in regard to the native local government system. Would the Minister maintain that the local government policy is also a sham because, whilst its avowed intention is to teach the native people to handle local aspects of their own affairs in accordance with democratic processes, the councils remain under strict Administrative control?

'29. In summary, the Minister's objections to the draft Ordinance would seem to be based partly on misconceptions, and partly on a theoretical conviction that the intricacies of English Common Law and elaborate court procedure are essential preliminaries to the administration of good justice in an evolving native society. The corollary to this is that courts conducted by lay men cannot be countenanced.

'30. In addition to the insuperable difficulties which the present facts of native development and native mentality oppose to this concept, and which I have attempted to describe above, it should be also noted that the concensus [sic] of informed opinion is against the Minister, not only in British colonies, but in England itself, the home of English Common Law. As A.J. Loveridge⁷ points out, the search for satisfactory courts is constantly on hand in England, and the similarity of the Colonial problem to that of England is striking.

⁷*Journal of African Administration*, Vol. 1, No. 1, p.10.

'31. A Committee on Justices' Clerks (1944),⁸ and a Royal Commission on Justices of the Peace in England (1948),⁹ both rejected the oft-suggested replacement of lay magistrates by professional stipendiaries. The Royal Commission added that in some circumstances the appointment of a stipendiary, to aid the lay bench in the interpretation of statutory rules and orders, was desirable. "The lay bench gives the ordinary citizen a part to play in the administration of the law, and it can perform its duties perfectly well with advice on legal questions - as well, indeed, as can a judge perform his duties with the findings of a jury (this should probably read 'assistance of a jury's findings') on questions of fact. It is true that the more advanced the community the more is the work of the 'magistrates' the concern of the central - sovereign - power, for even where the cases are mainly concerned with local matters it is their (apparently, 'the State's' is meant) responsibility to see that justice is done, but the work is best done by people with a knowledge of local ways of life and thought and speech."¹⁰

The Committee on Justices' Clerks recommended that three or five justices should sit at a time and that more than seven should not sit, and the Royal Commission on Justices of the Peace agreed with this view.

'32. These matters, however, are properly within the domain of professional legal men, particularly those with first-hand knowledge of the law as it affects the native population. I feel that comments from me on the application of English Common Law to native society will carry little weight, and I respectfully request that the Minister's Minute, and this memorandum, be passed to the Secretary for Law for his consideration and comment.

'33. In conclusion, I would emphasise that the draft legislation was prepared after very careful consideration, (para. 17 of the minute appears to suggest otherwise), and the desirability of steering the evolution of Native Courts along lines eventually merging with English procedure was fully appreciated.

⁸*Report of Departmental Committee on Justices' Clerks*, 1944 HMSO. Cmd. 6507.

⁹*Report of the Royal Commission on Justices of the Peace*, 1948, HMSO, Cmd. 7643.

¹⁰A.J. Loveridge, *Journal of African Administration*, vol.I, no.1, p.10) summarising the Royal Commission's findings.

'34. The Minister has not commented on the provision made for a Native Courts Adviser. The general function envisaged for this officer, who should be a professional lawyer, is to guide the native courts towards a standard that will ultimately enable them to be merged with the other Territorial subordinate courts.

His duties would be:

- (a) To advise generally on all questions connected with the operation and procedure of native courts;
- (b) To keep under review the tendencies of native customary law and to guide its evolution;
- (c) To study the relationship of native customary law and British law, and to keep the development of the relationship under review;
- (d) To keep under review, and where necessary to suggest modification in the composition and organisation of native courts;
- (e) To organise and direct research on incidental problems.

'35. These ideas are in line with the most recent developments in British colonies, and are designed to avoid the errors made in some Territories either by permitting an anachronistic native court system to "fossilize" or by prematurely thrusting complicated legal procedure on an unwilling and uncomprehending population.

'36. The vital factor in the search for satisfactory media for administering justice in a plural society context is correct handling of the blending process between the two cultures. It is a complex process, and the pace cannot be forced.'

'9/9/1955'

Chief Justice Phillips added his comments on the draft bill, and on the Minister's and Fenbury's commentaries, in his letter to the Administrator dated 24 November 1955 (quoted earlier in this chapter). He supported the Minister's views and rejected Fenbury's. The Minister, by his own account, first received any comments on his minute from Niugini in a memorandum from the Administrator dated 17

January 1956. It is not known whether this included any transmission of Fenbury's comments; whatever it said, Hasluck thereupon decided that 'special native courts of the kind proposed ... should not be established' (Hasluck, 1976: 186-91, where the Minister's minute of 27 January 1955 is reproduced verbatim).

The Derham report

From the year 1957, when he appointed the Melbourne barrister A.H. (later Sir Alan) Marm as Chief Justice to succeed Sir Beaumont Phillips, the Minister gave increasing attention to developing new approaches to the system of justice and courts in Niugini. In his own account of this period Sir Paul Hasluck recalls that there was no subject on which the gap between the Administration and himself was wider. He confesses that 'the advice that reinforced me came mostly from lawyers bred in the British and Australian traditions of the rule of law and not from field officers of the Administration'. After receiving in July 1959 a paper he had requested from Marm outlining 'Points Calling for Investigation and Revision in the Legal System', and consulting his ministerial colleagues in Canberra, Hasluck approached Professor D.P. (later Sir David) Derham towards the end of 1959, and a year later received his 'Report on the System for the Administration of Justice in the Territory of Papua and New Guinea' (Hasluck, 1976:343, 345, 349).

The following is Fenbury's draft of a proposed appendix to this book, as he left it in 1975. It comes more appropriately here:

The importance of the Derham Report did not derive from the accuracy of its observations or the wisdom of its conclusions. Both of these came under heavy fire in Niugini when the report reached there. The astonishingly speedy and uncritical adoption of Derham's recommendations by Hasluck, the Federal Minister for Territories, marked the administrative demise - at least in the Minister's view - of the 'multi-purpose rural area council' concept. (It is an odd fact that the councils legislation continued to provide partly for such institutions even after the new ordinance eliminating councils' law and order responsibilities came into force in 1965.)

Derham's recommendations facilitated two developments that Hasluck had already foreshadowed in various observations and minutes dating back to 1954. One of these developments was the replacement of the Native Local Government Councils Ordinance with legislation that would provide for inter-racial local government on the Australian model - concerned with 'matters of local interest only'. The other development was to reorganise the policing system and the courts of lower jurisdiction in the Niugini judicial system so that they conformed as closely as was feasible to Australian practices, i.e. to what Hasluck regarded as norms. The content of Derham's report is indicated by the statement made by the Minister for Territories in the House of Representatives at Canberra on 24 October 1961.^[11] Hasluck announced that as a result of investigations and recommendations made by Professor D.P. Derham the New Guinea judicial system was to be changed. The principal points made in the Minister's statement were that the Derham Report endorsed the Minister's 1955 rejection of native courts presided over by villager laymen, and recommended the abolition of courts presided over by Native Affairs officers and having jurisdiction only over indigenous persons. The Minister also stated that provision would be made for training local people as magistrates and that the courts in which they would preside and in which white magistrates would also preside would be courts to which all residents of Niugini would be subject. Hasluck also stated with unwitting humour that councils and councillors would be specifically excluded from the judicial system. The fact was, of course, that neither councils nor councillors had ever had any official position in the Territory's judicial system.

The circumstances leading to Professor Derham's appointment by Hasluck as a one-man committee of enquiry were never publicised.^[12] Derham at that time was a Professor of Jurisprudence at Melbourne University. According to his own statements he had had no previous personal involvement with the administrative and judicial problems that occur in emerging primitive dependencies. His enquiry was launched quietly in 1960. Derham spent only four weeks touring and enquiring in New Guinea before producing his report a few weeks later.

^[11] Typescript copies of the report (omitting parts of the appendices) were first released in 1973 to libraries and for circulation by its author. - R.S.P.]

^[12] Hasluck's book appeared after Fenbury's death. - R.S.P.]

Officials associated with local government deplored the selection by Mr Watkins, by that time the Secretary for Law, of Mr W.A. Lalor as Professor Derham's tour manager, professional assistant, consultant, and as the occasion demanded, his English/Melanesian Pidgin interpreter. Lalor, at that time the Niugini Public Solicitor,¹³ had joined the Department of District Services and Native Affairs in the early post-war period after spending some time in a seminary. He commenced studying law while recuperating from an accident, qualified as a barrister and solicitor, and transferred to the Department of Law. By 1961 Peter Lalor, as he was widely called, had acquired a reputation within the Niugini service as a clever lawyer and as a tilter at windmills who was prone to stray outside his proper role as a public defender.¹⁴ Thus an item published in the *Sydney Morning Herald* on 7 July 1961 (not long after the adoption of the Derham report) entitled 'Trade Unions Active in New Guinea' referred to Lalor as 'a devoted, almost militant advocate for native workers'.

At the time of Derham's tour Lalor was regarded by officials associated with local government and by local government councillors who had seen him appear against them frequently in Territory courts, as being unfavourably disposed towards the Tolai local government councils, at any rate to the Tolai Cocoa Project, and to any form of native courts. In this latter connection it is interesting to note that A. M. Healy has recorded as 'personal information' that W.A. Lalor was 'violently opposed to native courts on the grounds that the recognition of various systems of customary law poses impossible judicial problems and would be manipulated by cunning sophisticated natives ...' (Healy, 1962:301). Following the circulation of the Derham Report - in which Lalor's influence was clearly apparent to any officials who knew Lalor - I asked Watkins why he had chosen Lalor to accompany Derham. To this Watkins replied that no other legal officer who could speak Pidgin was available. At the end of May 1961 when I was an Executive Officer in the Department of the Administrator I was passed a copy of the newly arrived Derham Report and was asked to read it and to comment on it as rapidly as possible. At the same time I was informed

¹³ As at 1975, Mr W.A. Lalor was a judge of the Niugini Supreme Court on a fixed term appointment.

¹⁴ Some years later the then Secretary for Law, Mr L. Curtis, initiated some unsuccessful action to try and curb the Public Solicitor's autonomy.

that the Administrator believed that the Minister had already accepted Derham's recommendations. The following comments are reproduced from those which I submitted to the Assistant Administrator on 9 June 1961.

I began by saying that Professor Derham's report was quite a remarkable piece of work and that it was a tribute to his professional capacity and industry that, in the short space of four weeks' touring and enquiry, he was able to get so many of the Territory's involved legal and administrative problems into as clear a perspective as the report revealed. I stated that if it was intended to be a deliberately provocative document the report could be considered to be most valuable, but that regarded as a blueprint for redirection of policy which I understood was in fact its status the report 'is sufficiently inaccurate and misleading to be somewhat alarming'. In his acknowledgements Professor Derham stated that he had placed great reliance on the opinions of informed persons 'and almost complete dependence on them for the acquisition of necessary information'. On this I commented that it must be presumed that Derham was occasionally unfortunate in his choice of informants, had insufficient time to check some of the alleged facts, and perhaps had relied too much on memory. Further general criticisms of the Derham Report referred to the superficiality apparent in a number of its appraisals and over-simplification of some highly important administrative issues.

'Perhaps the Report's cardinal faults lie in the centralist bias with which Professor Derham seems to have approached various issues concerning the future development of the indigenous population, his tendency to equate these emerging society problems narrowly to Australian conditions and practices, and his tendency - inevitable, perhaps, in a professional jurist - to demand legal perfectionism in a context where the overall conditions militate against perfectionism in any branch of government.'

As I had previously argued that for quite a few years to come one of the prerequisites for New Guinea surviving as a nation after independence would be a strong unitary government ready and able to practise tough centralist philosophies regarding policies and services of vital national importance, I found it necessary to qualify my criticism by stating that I did not favour a federal system but that a tough unitary government needed to be offset by developing

sturdy and well developed institutions at local area level. I stated that Professor Derham had overlooked the need to develop institutions which would give the village people the necessary degrees of political and legal awareness that might afford them some protection against the vagaries of their own future politicians. Before embarking on a detailed commentary I made a further comment that Derham had used Australian yardsticks to gauge the Territory's juridical shortcomings without making allowances for the profound differences that existed in the outlooks and values of the two communities. 'Nowhere does he seem to have attempted to assess popular attitudes - the prevailing degrees of indigenous satisfaction or dissatisfaction with the quality of the justice that is currently dispensed.' The detailed commentary was restricted to those sections of the report concerned with local government and allied matters. I was not of course competent to comment on the sections of the Derham Report relating to specific legal matters.

The following extracts from the detailed commentary will serve to support the generalised criticisms made of Derham's report in my own comments and in those of various other officials. Thus para. 42 of his report (page 27) stated:

In spite of the Ministerial condemnation of the proposal for a Native Courts Ordinance (1955) there has been a more or less unofficial development of native 'courts' in connection with the development of Local Government Councils. Each Council has its own disputes committee. These committees, sometimes committees of the whole council, conduct regular hearings and keep records and dispose of disputes.

My observations on this astonishing paragraph were that it was 'factually incorrect and indicative of very superficial enquiry. A broad generalisation has been drawn from one specialised situation ...

10. The only Council (out of some 40 odd) that has a "Disputes Committee" is Hanuabada. I understand that this committee was first set up by Sir Hubert Murray to handle matters such as marriage and land disputes which Courts for Native Matters in Papua were precluded from hearing. The incorporation of this long-standing community committee into the Hanuabada Council is therefore largely a matter of historical accident.

'11. No other council has such a Committee. I have no doubt that some individual councillors, in almost every council area, "hear courts" in their villages in the same manner as some luluais, village constables, and mission teachers, but far from having any sanction to do so, they have been frequently warned against the practice.'

... ..

'9. The Councils have, in fact, put a brake on the development of unofficial courts. When the local government system was first introduced to the Gazelle Peninsula (the chief testing ground) it became necessary for the Native Affairs officers concerned to take firm action to demolish the widespread system of "unofficial" courts that had grown up under the old "Kivungs". To fill the gap, a system of regular fortnightly court days was instituted at each of the Tolai council houses. These were regular official sittings of the Court for Native Affairs [presided over by members of the Court for Native Affairs]. They were additional to the court sessions of the Magistrate in Rabaul and those held by D.N.A. officers at the District and Sub-District office ...'

A second observation of Derham's will serve to illustrate the degree to which his report was inaccurate and the reasons why it was criticised. At para. 101 (page 59) his report stated that 'A number of officers concerned with native local government have strongly advocated the view that Councils should conduct their own Courts, pass their own laws, and be provided with educational facilities to enable them to develop a local legal system suitable to their needs'. My observations on this statement were that it was

'Factually incorrect and indicative of some confusion re the basic issues.

- (a) It was never advocated by any officers concerned with local government that councils should conduct their own courts. It was submitted that a native court system only appeared feasible in council areas, where the essential administrative machinery existed for maintaining court records, accounting for fines and fees, etc.
- (b) It was never proposed that the members of a Council should be ex officio court members, or that court members should be subject to election.

It was proposed that the appointment of panels of court members should be made by the Administrator from lists drawn up in the first instance by Councils.

- (c) It was never proposed that councils "should pass their own laws" in any form beyond the provisions laid down in the existing local government legislation covering the passage of local rules. These provisions do not impinge on the statutory criminal law of the Territory and preclude certification of any rule which impinges on Territory legislation. It should also be noted that the 1954 draft Native Courts Ordinance placed various limitations on the [proposed] courts' jurisdiction in both criminal and civil matters ... It seems doubtful whether Professor Derham read the draft Ordinance.

- (d) It was never proposed that the "legal system" to be adopted by Native Courts should vary from that currently used in Courts for Native Matters and Courts for Native Affairs. It was proposed (draft, Section 18) that professional advocates should be barred, at least for the time being. The reasons for this are obvious, and are outlined in para. 2 of page 14 of J.H. Jearey's paper on African tribunals (Appendix "F" of Professor Derham's Report).'

The official observation on this portion of Professor Derham's report was that no special educational facilities were advocated for native court members other than the appointment of a qualified lawyer as a native courts adviser. My comments added: 'One of this officer's primary functions would have been to ensure that Native Court procedure, as it elaborated, remained oriented to the Territory judicial system'.

The comments rebutted the statement made in Derham's report (para. 50) that the 1954 Niugini native court draft ordinance 'drew heavily upon legislation adopted in various African colonies'. Subsequently Derham stated that the proposals were unsound for this reason alone because 'Not only are the difficulties and problems different in Papua and New Guinea, but the commitments for future development are

different now in Papua New Guinea from those in the African colonies at the relevant times'.

My comments continued (paras. 15f. of comments):

'The analysis in paragraph 50 distorts the arguments of those advocating a Native Courts system, unduly emphasises the "native customary law" aspect, and neglects the basic issue. The basic issue is that of educating the native population into the principles of British justice by giving them an active role in its practice, thereby breaking down the deeply-seated native feeling that "Government Courts" are essentially alien. Experience everywhere shows that this cannot be done by imposing "nativised" courts from above.

'16. The 1954 draft Ordinance was not derived from British African territories legislation. The fact that the draft included some recent fruits of British experience (e.g. the provision for a Native Courts adviser) serves to emphasise that (despite Professor Derham's implied view that the Territory is somewhat unique) Territory conditions, the problems involved in the advancement of the indigenous population, and "the commitments for future development", exhibit striking similarities to those of many African territories.

'17. There is, however, one major difference. The general absence of any traditional institutions in Melanesian society comparable to the African Chiefdoms has proved to be an advantage in the task of steering native society towards Western democratic concepts. Preliminary demolitions are not required, and it has been possible for the "artificial" institutions (i.e. the area councils) we have established to be immediately given a western orientation. The Native Courts provided for in the 1954 draft Ordinance would have been much more British in character than any comparable courts in British East Africa.

'18. The [Derham] report seems to suggest that the British African native courts systems were originally conceived as an "apartheid" measure, at a time when the ultimate independence of those territories was not envisaged. Professor Derham argues that, since we are already clearly committed to self-government or independence for this territory, we have no reason to pursue a course parallel to British Africa's - a course yielding sub-standard justice and creating its own problems. This argument rests on false assumptions regarding British colonial practice, and also indicates some ignorance of indigenous psychology.

'19. In East Africa, the Germans, before the turn of the century, set up Central Government Courts with African magistrates (the "Akidas") throughout the country. After 1921, the British (except in the detribalised urban areas of what had become the Mandated Territory of Tanganyika) replaced these African magistrates' [or Akidas] courts with local courts presided over by chiefs and elders. Their reasons were: firstly to satisfy popular demand for local courts (the African magistrates' courts [i.e. the Akidas' courts] had never been accepted by Africans as their courts), and secondly, the revised system allowed Africans to feel that they were actively participating with Government in the administration of justice.

'20. It is quite probable that the standards of the "Akidas" courts were higher than those of their [untutored chiefly] successors, but this counted for little in African opinion. It is quite fallacious to assume that the primitive villager must prefer the Court with the highest technical standards. "Justice must not only be done, it must appear to be done."

The criticisms of Professor Derham's report on the lower courts continued with the statement that

'there is an unwarranted implication in para. 50 of the report that the officers responsible for preparing the 1954 draft [Native Courts] Ordinance were imbued with the sort of outmoded "Indirect Rule" fervour that apparently characterised Northern Nigerian administrative practices in the 1920's'.

'22. It was never argued by advocates of a Native Courts system (nor does the 1954 draft imply it) that native customary practices and institutions are either sacrosanct or immutable. It was never proposed that the native courts provided for in this draft Ordinance should be "customary courts" after the style of African Chiefs' courts. In the Territory context, the notion is absurd. The type of procedure envisaged for the conduct of native courts [in Niugini] was the simplified but essentially British procedure long used in Courts for Native Matters [Papua] and Courts for Native Affairs [New Guinea]. These procedures are procedures with which all of the native communities which would have been affected by the courts system are already familiar.'

The Derham Report had apparently made some comment to the effect that the 1954 draft courts ordinance advocated fossilising native customary usages. The comment on this

aspect was that while the draft courts ordinance obviously implied that a native court bench of local laymen should be more competent than a European or a 'foreign' indigenous magistrate to decide certain categories of civil issues (e.g. marriage and bride price disputes) in the light of local customary usages, this could not properly be construed as advocating the fossilising of customary usages in general. 'As the laws of the Territory stand, every Territory court - in the Trust Territory at any rate - is bound to take cognisance of relevant local custom in determining civil issues.'

In paragraphs 54 and 55 of his report Professor Derham directed attention to the vagueness of the legal situation regarding native customary usages. He observed that, under culture contact, unrecorded customary usages tended to become progressively modified, and hence progressively more cloudy and arbitrary. Derham seemed to believe, however, that 'some agency of the Central Government' should be able to lay down, from time to time, just what the prevailing state of customary usage might be or should be in any particular area. On this I commented that 'The diversities in practices, no less than the wide variations in degrees of culture contact, stultify any such proposal. In fact, the only feasible way in which evolving customary usages can be legally veered towards Western concepts - and hence homogeneity - is by way of periodic redefinition through area council rules, enforced by local courts. It is to be regretted that the Report paid no attention to this aspect'.

Professor Derham recognised that there was an immediate need for Niuginians to participate in the administration of justice. He came out solidly in favour of professional magistrates and opposed a lay bench. Derham recognised that the availability of suitably trained native magistrates was a difficult matter. He therefore 'advocated the appointment of Native Justices selected (from persons nominated or elected by the natives) for their capacity and integrity, their fluency in written and spoken English, and for their standing in the native communities, who would sit as junior members of a court presided over by European Magistrates'. Derham stated that he had been informed that such suitable persons could be found in the Rabaul and Port Moresby areas at the time of his enquiry.

In commenting on these recommendations in the Derham report I pointed out that suitably qualified indigenous people would not be available outside of administration employment in either the Rabaul or the Port Moresby areas at that time. I then pointed out that 'Having two Native Justices sit with an Assistant District Officer or Patrol Officer magistrate may go some little distance towards dispelling the "alien white man's court" attitude that now prevails towards most Government courts, but it will not make justice any more accessible, and will tend to make it less, rather than more, expeditious. Implementing these proposals will not fill the gap currently occupied by the illicit village tribunals'. I also queried [para. 28(c)] whether

'In terms of native evolution ... the establishment of panels of unqualified local native Government magistrates, presumably doomed to ultimate unemployment, will not give rise to more problems than would the establishment of purely native courts as an interim measure (which is the purpose they were intended to serve).

'(d) The suggestion that the native magistrates could be elected by the native people is a curious one. One of the Minister's severest criticisms of of the 1954 draft Native Courts Ordinance derived from his misconception that the Court members were to be elected. (It was, in fact, proposed that they be appointed by the Administrator from lists submitted by Councils.)'

Derham's observations on native local government council matters

Para. 102 (page 59) of Derham's report included the rather startling statement that 'They (Councils) have been conducting, and have been encouraged to conduct, their own unofficial disputes settling (i.e. judicial) proceedings'. This was factually incorrect and obviously was a generalisation based on the particular situation that existed in one particular council, Hanuabada. Having pointed this out my comment stated:

'30. ... In no case has any council been officially encouraged to conduct its own unofficial judicial proceedings. In fact, in the Council areas the holding of "unofficial" courts has

been actively discouraged, this followed logically from the establishment of the local government system. Supervising officers could hardly promote, on the one hand, a policy that amounts to education in conducting public administration according to the rule of law, and on the other hand encourage the same people to engage in activities not sanctioned by the law.'

In the same paragraph (Derham's report para. 102) Derham observed that 'The Councillors are expected to act at one time as legislators, at another as executive officers, and yet another as their own policemen'. On this I commented:

'32. ... Professor Derham seems to have been unable to appreciate that in primitive Territory society, political, economic, social and juridical authority is vested in the one group of leaders. That fact constitutes the starting point in all westernising processes aimed at indigenous advancement, and it cannot be ignored. The establishment of an area council marks the commencement of an evolutionary process designed to separate out these functions, partly by building up staffs of subordinate council employees. The pace is necessarily determined by the degree of acculturation of the communities concerned, the scope of each council's functions, and each unit's financial resources.

'33. The development of a competent local government clerical service, the introduction of native technicians [carpenters, plumbers, painters, etc.] and the provision of council constables ... are all parts of the process of relieving elected council members of direct responsibility for executive functions. Their essential residual functions cover participation in local area planning and management, the consideration and passage of subordinate legislation [council rules], and financial control.

'34. The pace of separating out council functions must be commensurate with the evolution of native thinking, the development of [council] activities, and with the financial implication [of new activities]. The painless evolution of the administration of the Tolai Cocoa Project from a series of council-run enterprises to a Central Board of Management ... on which Council representatives are a minority, is a fair example of the evolutionary process in operation. At this stage in native area council development, to stipulate that Councillors' authority must be confined to the Council

Chamber (as frequently advocated by the Rev. Fr. James Dwyer) would simply stultify the whole policy. Ironically, in practice, one of the hardest tasks facing supervising officers is to get the elected councillors (frequently elderly, conservative, and uncomprehending) to wield any executive authority whatsoever. In most council situations the weak majority of members is "carried" by a handful of the more alert and energetic.'

Perhaps the most revealing statements on the native local government policy contained in the Derham report were in paragraph 104, where the Professor said:

There has been an unfortunate difference of view as to the proper operation of the Local Government Ordinance and in particular of Section 12 thereof. On the first view the Ordinance is read as creating local government bodies not unlike those familiar in England and Australia and [sic] so that Native Local Government Councils are equivalent to Municipal or Shire Councils in Australia. On this view the general powers of a Council, whether of an administrative or a legislative kind, would be so read as to exclude all subjects not appropriate to the concept of local government, unless of course, the subject is specifically conferred. The other view is that the Ordinance does nothing of the sort; that all it does is to establish a machinery for area administration ...

Later in the same paragraph Derham observed that 'the view that the Local Government structure is merely part of the machinery of area administration and does not involve a genuine attempt to separate matters of local concern from matters of Territory-wide concern, is a dangerous one ...'.

My observations on these statements were as follows:

'39. ... Having regard to the qualifications of its author, the second (underlined [by me]) sentence in the above quotation is an astonishing statement. Even to a layman, the most casual "first view" of the principal operative sections (e.g. Sections 9, 10, 11, 12, 19) of the [Native Local Government] Councils Ordinance must surely convey a clear impression that they provide for a type of public body carrying functions

extending far beyond the metropolitan Australian connotation of municipal or shire local government. This was not done inadvertently. It is unfortunate that Professor Derham's attention was not directed to a number of official documents bearing on the basic policy aspects of native local government, viz. Circular Memo. No. 5/59, Circular Instruction No. 141 (DNA) [issued by the Assistant Administrator], and the typescript DNA handbook "Functions and Finances of Native Local Government". The Territory's native local government councils were never intended to be counterparts of Australian municipal or shire bodies, and it is quite fallacious to evaluate them according to the degree to which they conform to, or differ from, Australian institutions.

'40. The policy of initially developing native local government largely (but not entirely) as a central government instrumentality derives from the character of the human and physical problems involved in raising indigenous living standards and fostering indigenous civic and political awareness. In the rural "tribal" areas where the local government system is being applied, the communities concerned have initially only the haziest notions of the overall responsibilities of government, and the financial implications of public administration. Further, they possess, at best, only a meagre ability to support even the most elementary local services.

'41. In the Administration approach to this sort of situation, it would be quite futile to try and demarcate, at the outset, rigid spheres of central government and local government activities. The first essential task facing supervising officers is to inculcate some idea of what the general functions of democratic governments are, and the relationship of local to central government. The basic prerogatives of central government are clearly defined at the beginning [of the civic education programme]. The second task is to assess the particular area's most pressing needs and to direct the council's interests accordingly. In almost every area situation these needs are still the fundamentals of civilisation - communications, economic development, health and education - and to meet them the Administration must have the active co-operation of the people.

'42. The most effective technique for achieving this co-operation is to involve the people systematically as participants in policy development at local area levels, on a "junior partnership" basis with the central government departments concerned. The detailed arrangements vary

according to local circumstances, but in the fields of communications, health, education, agriculture and law and order, which constitute our most urgent problems, the financial implications alone immediately establish a rough division of responsibilities. In the context of the typical "tribal area" situation, the immediate Administrative advantage derived from establishing a council lies in mobilising hitherto dissociated human and financial resources, and orienting them in accordance with overall central government policies.

'43. In a Western European community, the introduction of local government normally pre-supposes certain existing levels of economic development and of civil and political awareness. In the Territory context the introduction of local government provides the means for fostering these things. It is thus quite fallacious to equate the functions of Native local government and its present relationship with central government agencies, to Australian practices.

'44. Defining the precise lines of demarcation between Central Government and Native Local Government spheres of responsibility is largely an evolutionary process, potentially influenced by financial implications. In some fields - e.g. health and education - it has been already feasible to establish certain principles of fairly general application governing the "junior partner" relationship. In other fields - e.g. the maintenance of law and order - administrative arrangements have yet to be made.

'45. Having regard to the diversities in area conditions that currently exist over the Territory, any attempted ossification of local/central government relationships at this stage (as Professor Derham appears to recommend) would be not only premature, but would probably stultify the whole policy approach. As stated in C[ircular] M[emorandum] 5/59 ("Native Local Government") "the precise terms of each area council/administration department relationship will be worked out as the evolving needs arise". At present the range of "matters proper to local government concern" is, in the Territory context, necessarily much broader than in a highly developed country.

'46. Amending the Councils legislation so as to provide for the precise functions of each local government unit to be conferred by instrument may appear attractive to the legal mind; in practice it would be cumbersome, conducive to

delays, and apt to create more serious problems than those the proposition purports to cure. As it stands, the Native Local Government Councils Ordinance is a fairly flexible enabling ordinance, with adequate safeguards. In a rapidly evolving native situation, any changes making for rigidity, and imposing an arbitrary pattern of functions before the optimum lines of demarcation are clear, must impair the efficiency of the overall effort to raise indigenous living standards, which is the area council policy's primary objective.'

In paragraph 104 of his report Professor Derham registered some criticisms of the council taxation system of no great consequence but then indulged in another remarkable generalisation: 'There have been conflicts of policy between the Native Affairs Department with respect to local government developments and other Departments of the Government'.

My observations on this statement were:

'53. ... The term "conflicts of policy" does not accurately indicate the sorts of difficulties that have arisen. It has been laid down at Assistant Administrator level (C.M. 5/59) that area councils are designed to serve the needs of all Departments directly concerned with indigenous development and welfare, and the procedures through which this integration of departmental policies at area level are [sic] to be effected are also quite clear. There has been some apparent reluctance by certain departments, particularly the Department of Agriculture, Stock and Fisheries, to utilise area council machinery in the projection of departmental policies. The underlying reasons [for this reluctance] lie more in the realm of interdepartmental rivalries, in the prejudices of individual officers, and in the peculiar status of the Department of Native Affairs, than in conflicts regarding the interpretation of the local government policy. The situation has been aggravated by the lack of interdepartmental area development planning, and inadequate central government machinery to effect and enforce the co-ordination of departmental policies directly affecting the native community.

'54. It is apparently difficult even for "educated, intelligent and experienced members of western communities" [an extract from Derham's report] to understand that in primitive societies the economic, social, political and juridical

aspects of daily life are closely intertwined. At this stage in indigenous evolution, once an area council is established it is imperative that it be fully utilised in the overall advancement of the Council area population. Unless it is so utilised, it will be either rejected by the community for its failure to satisfy their expectations, or it is apt to become a focal point for local dissatisfaction. One of the biggest dangers currently facing the local government policy lies in our failure to develop adequate council rules in respect to local economic development.'

At page 61 in his report Professor Derham observed that 'Rules have been made by Local Government Councils at the instance of Native Affairs Officers which have, on the one hand, conflicted with Ordinances and Regulations in force in the Territory and, on the other, have gone to questions of general Territory policy rather than to matters proper for local concern'.

On this I commented:

'56. ... A serious distortion of the actual situation. Almost every council rule that has been passed has been either initiated, or at least framed, by council supervising officers. No rule has been certified which, *prima facie*, conflicted with Territory legislation. Difficulties have arisen because of advisory legal opinions that rules which to some degree amplified or paralleled existing Territory legislation were for that reason "ultra vires". In other words, any conflict between Council rules and Territory legislation has been of a technical character only, and has been primarily due to the detailed regulations accompanying much Territory legislation.

'57. It is disappointing that Professor Derham, with whom this aspect was discussed at some length, has not suggested any means of overcoming this sort of difficulty, which has promoted considerable native confusion and dissatisfaction.'

As a non-legal administrative officer I had frequently expressed the opinion that what was required was a brief Territory ordinance stating that a council rule should not be ruled *ultra vires* unless it was in conflict with Territory legislation. In my comments on this matter I added that supervising officers were under strict instructions to ensure that any proposed rule impinging on the activities of a

technical department had first to be cleared by that department. I added that this practice, however, had not prevented such rules being considered *ultra vires* by the lawyers. The proposed rule of the Tolai councils relating to the fermenting of cocoa was one in this category.

Professor Derham's last major criticism of the native local government council system came under Part III of his report, on police matters. His report (page 39) made recommendations regarding the recruitment and training of European officers and the establishment of the police force as a statutory body outside the public service. At page 62 his report made the following observations regarding the law and order responsibilities of native local government councils:

To allow Native Local Government Councils to appoint and maintain their own police forces is clearly wrong. It is the considered opinion of a large majority of the Native Affairs Officers concerned with Native Local Government Councils that it is wrong. In practice at present most such Native Local Government Constables act, under the supervision of Native Affairs Officers, as very little more than council officials and as messengers. In some cases, however, this is not so, and clearly the system has the seeds of real dangers within it. Council policemen ought not to be entrusted with general powers of arrest

The report's summary of recommendations included (page 7, para 7(c)(ii)): To 'abolish the system of Native Local Government Council Constables and relate police work in Council areas to the work of the regular Police Force'.

I commented that it was difficult to understand how Professor Derham could have recorded such an over-simplified condemnation of the Council Constables' arrangement in his report when he had previously displayed, in conversation, a fairly clear appreciation of the issues involved.

I continued:

'64. The following points reiterate those brought out in conversation with Professor Derham during the course of his enquiries:

- (a) Decentralisation of responsibility for the maintenance of law and order has characterised the administration of almost every backward tropical dependency, but is also, of course, a feature of governmental practice in such highly developed countries as Great Britain and the U.S.A. Difficult communications and staff shortages are therefore not the only factors involved. In primitive dependencies the practice has developed logically from the facts of the general administrative situation.
- (b) The indigenous rural communities of Papua and New Guinea are still largely ignorant of their rights and responsibilities under Territory law, and distrust strangers (including "foreign" police). They have as yet little conception of the public offence as opposed to the private injury, are subject to contagious emotional reactions to parochial squabbles, and are much more prone than is a Western European community to resort to violence when disputes arise between individuals or groups.
- (c) To cope with this background situation, village constables (Papua) and luluais (New Guinea) were long ago charged with local law and order maintenance responsibilities. They have powers of arrest and a duty to report crime, but their most important law and order function has always been that of conciliatory intervention. These arrangements have persisted, partly because of the physical impossibility of Central Government doing all the policing itself, partly because it became increasingly clear that a genuine acceptance of the rule of law could only be achieved by fostering participation in law and order maintenance at grass roots level. There has been no feasible alternative. Not only do conditions of terrain and population distribution militate against effective policing, on the scale required, by Central Government agents, but the majority of these Government agents - the indigenous Territorial Constabulary - are neither sufficiently trained nor sufficiently imbued with the ideals of the rule of law to operate without close surveillance. As a law officer the village official is frequently too lax, and is inevitably

vulnerable to the demands of kinship obligations; but he is less prone than the "foreign" policeman to abuse his authority.

- (d) The responsibilities for maintaining law and order with which local government councils are charged under the Ordinance followed logically from the duties of the village officials whom the councils displaced. The mere fact of establishing a council over an area does not bring about immediate changes in long-standing native attitudes. If the councils had not been given any law and order maintenance duties, a vacuum would have resulted. If, as Professor Derham seems to suggest, this had been filled by introducing Central Government police operating quite independently of the Councils, then the Councils, needed by constituents to "protect" them from the foreigners' petty tyrannies, would inevitably have tended to throw their weight against law enforcement.
- (e) The provision made in the [Councils] Ordinance for appointing council constables followed logically from the responsibilities given councils to maintain law and order. Since elected councillors could hardly be expected to fill an area police role effectively, it was necessary for this particular Council function to be separated out at the beginning. The theoretical risks implicit in an arrangement permitting the formation of "private armies" were recognised when the policy was first implemented. In practice these risks have not materialised.
- (f) It has been policy - potentially reinforced by financial considerations - to keep the number of council constables employed by each unit to a minimum. It was also envisaged that a "junior partner" relationship could be developed between councils and the Territory Police Force. Since 1951 there have been several unsuccessful attempts to effect this. As a result of this gap, the council constables, far from abusing their police authority, have generally failed to exercise it. They have, in fact, operated mainly as council messengers, escorts and watchmen ...

(g) The present "Council constables" arrangement is not resulting in sufficiently effective policing of council areas, and some reorganisation is definitely desirable. The two pre-requisites for council areas to be effectively policed by members of the Territory Police Force along lines in harmony with burgeoning indigenous political awareness, are:

(i) Establishment of a system of regular liaison between each Council executive and the nearest local police headquarters;

(ii) clearly defined arrangements covering council/local police detachment relationships, and, inter alia, laying down the circumstances under which (native) members of the Territory Police on duty in council areas may act under the instructions of the Council executive. It must be borne in mind firstly that local councillors are likely to learn of breaches of the law in their home villages in advance of the police, and secondly, that breaches of local council rules may require a council executive to initiate police action.

(h) There are certain areas (e.g. the Tolai Council areas) where a long history of antipathy between the Territory police and the local people militates against any sudden change-over being successful. In such areas it would be preferable to make initial arrangements whereby a local council constable and a Territory policeman worked together. This, in fact, would be the best initial arrangement in all council areas.'

My official observation on Derham's strictures against council constables being 'entrusted with powers of arrest' was that this illustrated the distortions that can occur through arguing by analogy from metropolitan contexts. 'To the indigenous population of the Territory there is little or no difference between receiving a verbal summons delivered by a policeman and being "arrested". As mentioned above, every village constable in Papua, and every luluai in the Trust Territory, has the power of arrest. The Papuan village constables, in fact, are still issued with handcuffs.'

Thus ends Fenbury's text on the Derham report. It is not known if his twenty-four page memorandum of 9 June 1961 ever reached the minister, who complains in *A Time for Building* that his submission of the Derham recommendations to the Administration 'produced very little comment or advice' (Hasluck, 1976:345) and that 'the Administration did not use its opportunities to change the mind of the Minister and to modify policy, but resisted the application of policy' (1976:354). It is not easy to see what these opportunities were if, as Fenbury recalls, the Derham report was 'newly arrived' in Niugini when he first saw it 'at the end of May 1961'. Hasluck himself records that Derham presented his report in December 1960, that he (the Minister) studied it with care before referring it to the Department and to the Administration, and 'in early February 1961 directed that "immediate action should be taken to put the policy into effect"' (Hasluck, 1976:350). But by the same account, Fenbury's memorandum would have had little chance of changing the Minister's mind if it had been solicited in time. Fenbury is actually mentioned there as '[t]he most intelligent and consistent exponent' of a view of the courts issue which represented the considered experience of the Territory and which Hasluck says he respected. But as he goes on, this was a 'view contrary to my own' or, as he puts it a paragraph later, 'contrary to policy' (Hasluck, 1976:344-5). And that was that.

Indigenous attitudes to Australian judicial administration

The remaining papers Fenbury had assembled for use in this 'Courts' chapter concerned the attitudes of Niuginians towards the increasingly conventional style of administering justice, using sophisticated European forms and procedures, especially in the Supreme Court, that was promoted after the appointment of Marn as Chief Justice in 1957 and the adoption of the Derham recommendations in 1961. In July 1963 Fenbury, as Secretary to the Department of the Administrator and with the Administrator's approval, asked District Commissioners to report on 'current trends in indigenous attitudes towards the Territory courts and the law generally', in the light of '[s]uggestions ... reaching these headquarters that the inability of indigenous communities to comprehend the technical legal processes and English common law refinements that now characterise the administration of justice in the Territory is promoting serious dissatisfaction', and that

'the overall result of implementing various measures, laudably designed to impress upon the indigenous population that Justice is above and quite separate from Government, is a decline in the prestige of the Courts' (File 34-1-7, 16 July 1963).

In a 'Background note' dated 15 March 1973 Fenbury states that this survey was prompted partly by 'several "spot issue" memos from field officers, partly by two or three incidents involving the proceedings of the Supreme Court itself. Of these, the most startling was the 1963 (?) Kainantu case (Minogue J.) during the course of which three defendants of a group ... on trial for murder were axed by three spectators who were relatives of the alleged murder victims. ... The axemen calmly stated that they knew the defendants were guilty, but that the "big court" would acquit them'.

In due course a collation and summary of the D.C.s' reports was circulated to all District offices, as well as being referred to the Secretary for Law 'for study'. In the interests of objectivity, the précis task was assigned to a young Englishman recently recruited to the service and it ran to some 12 pages of single-spaced typing. It stated that District Commissioners were 'virtually unanimous' that 'The indigene had confidence in the Department of Native Affairs Officer', and 'understood the punitive aspects of the administration of justice, but not the present corrective and educational intentions; nor the move for separation of the executive and judicial functions.' The people reportedly directed their heaviest criticism at the Supreme Court. The indigene did not understand the court processes, particularly legal argument, the relationship between the participants and counsel, the intricacies of pleading, and acquittal through legal technicalities. The changes had been imposed too suddenly, without preparation or explanation, and without consulting the needs of the situation or wishes of the people, and were being applied by new judges and counsel with little understanding of the people or experience of the Territory, and in most cases unable to speak a lingua franca. '[T]o the indigene the Supreme Court is part of the Government, and its aloofness, incomprehensibility, inconsistency, and weakness are the faults of the Government, and justice is manifestly not done'. These general views were supplemented by detailed examples of delays in hearings by the Supreme Court, a growing backlog of land disputes which had been

removed from the jurisdiction of Native Affairs officers without adequate alternative provision, indigenes treating corrective institutions as 'something of a joke', their bafflement at the apparent lightness and inconsistency of sentences, hence taking the law violently into their own hands, increases in capital crime, and so on.

Needless to say this document caused some consternation among the Supreme Court judges when it came to their notice, not only because of its contents (which in some respects were undoubtedly tendentious but also included constructive and acceptable recommendations), but more particularly because some took its circulation to field staff as part of a campaign by the Administration to undermine the authority of the Supreme Court and in Fenbury's words 'hold it up to ridicule by every junior field staff officer'. According to Fenbury, the Chief Justice's complaints in Canberra to this effect ultimately resulted in Menzies sending up Snedden (then Federal Attorney-General)'. Fenbury's personal note of his meeting with the Attorney-General, which follows below, expresses succinctly his own views on the problems resulting from the way in which Australian legal practices were introduced in the highest Niugini court - and thus complements the preceding discussions of the law and order vacuum allowed to persist at the village level, a vacuum which of course continued to be filled, though with decreasing effectiveness, by the unofficial activities of local government councillors, village elders, indigenous interpreters, policemen and other unauthorised persons.

'Note on discussion held with the Attorney-General, the Hon. Mr Snedden, in my office on 24th June, 1964, 3-30 p.m. - 5-00 p.m.

'The discussion took place at Mr Snedden's request. We had not previously met.

'The Attorney-General appeared to approach the discussion with certain preconceived ideas which, in my assessment, reflected views previously expressed to me by Mr Justice Smithers.

'In his opening comment the Attorney-General opined:

- (1) That relations between the Executive and Judiciary were bad;

- (2) That "personal incompatibilities" were a factor in this situation;
- (3) That the Executive had fomented criticism of the Judiciary and had thereby undermined its prestige;
- (4) That the attitudes of senior officers were infecting junior officers and lowering their respect for the courts.

'I endeavoured to make, as clearly as possible, the following points:

- (1) That acceptance by the indigenous population of the Rule of Law, under the guidance of a Judiciary acting independently of the Executive, was accepted by all responsible officers of the Executive arm as an indispensable pre-requisite for the successful development and survival of democratic institutions in the Territory. There could be no other view on this.
- (2) That for this reason the Executive was just as much concerned as the Judiciary that nothing should impede the lengthy educational process implicit in achieving acceptance of the Rule of Law by the indigenous population. Any suggestion that the Executive had any desire to attempt to undermine the prestige of the courts or anything to gain from attempting to do so, was patently absurd.
- (3) That the existing difficulties derived from the simple fact that for the Rule of Law to be popularly accepted it had to be understood.
- (4) That while there had been no major changes in the legal system in as far as criminal law was concerned, during recent years several factors had combined to make the administration of justice less comprehensible to the indigenous population than it had been. These factors included the advent, within a fairly compressed period, of a Supreme Court bench three of whose members had had no prior experience of primitive social and cultural patterns, and a rapid proliferation of legal machinery, including the establishment of a Public Solicitor's office whose interests and activities extended well beyond those of comparable institutions in Australia.

- (5) That one result of the operation of these and other factors was a more technical approach to the administration of justice than had obtained in the past, including full-scale application of all the subtleties and technicalities of English Common Law.
- (6) That in consequence, the verdicts of the courts were frequently incomprehensible to the indigenous population, which was quite unable to appreciate that a court might be unable to convict a guilty person because of technical flaws in the burden of proof, etc. The acquittal of an accused person whom everybody in the community knew to be guilty of the crime with which he had been charged was regarded by primitive villagers as inefficient justice. Granted that in such cases justice had been done, part of the problem we were facing lay in the fact that, more frequently than hitherto, justice did not always appear to have been done.
- (7) An additional complication derived from the indigenous community's inability to distinguish clearly between the Judicial, Legislative and Executive functions of government. This point was of fundamental importance. The Executive could not afford to remain disinterested [sic] re developing indigenous attitudes to the courts, if only because these attitudes were highly liable to be translated into actions involving the Executive. In Australia an unpopular High Court decision did not promote dissatisfaction with the Government in power. Here the situation was different.
- (8) The basic danger in these primitive dependency situations was that if the evolution of legal refinements outstripped the evolution of native society the Judicial arm of government could ultimately defeat its own primary objective of building up a popular image of the courts as the guardians of the individual's liberties.
- (9) I emphasised that the problem was not new and referred to similar difficulties that had occurred

in former British colonial territories. The Attorney-General pressed for my personal view regarding solutions. I stated that I believed the problem could only be resolved by the Judges themselves and suggested that certain things would probably be cured as the Judiciary gained in experience. The Attorney-General questioned me closely regarding what I considered to be unnecessary technicalities in current legal processes. This was followed by some discussion re the admissibility of confessions, and the degree to which, in major criminal cases, Territory circumstances tend to favour the defence.

- (10) I suggested a need for adapting English Common Law procedures to primitive dependency circumstances and passed to the Attorney-General an extract from an H.M.S.O. report (CMD.1030) in which Lord Justice Denning is quoted as expressing a similar view. The Attorney-General stated that this was a problem for the Minister for Territories. I also suggested that the feasibility of introducing jury trials for indigenous persons charged with major crimes warranted close examination, if only because this would at least ensure that the legal points at issue in a particular case were made comprehensible to the indigenous community. The Attorney-General made no comment on this suggestion.
- (11) The Attorney-General displayed considerable interest in the circumstances surrounding the compilation of the district surveys of indigenous attitudes to the courts initiated by this Department in 1963. I am not sure whether he had read the document but he was obviously familiar with the background. He expressed a view (also strongly held by Mr Justice Smithers) that he thought I had not acted wisely in making the composite survey results available to District Commissioners and field staff officers. The implication of his comments on this matter was that it might have been interpreted as constituting Headquarters endorsement of the criticisms of the courts contained in the compilation. This aspect was discussed at some length. I emphasised to the Attorney-General that the critical comments were not the views of Executive Officers but their

assessments of the attitudes of the indigenous population. I passed to him a copy of the original circular instruction initiating the survey.

(12) In the course of further discussion on the survey I commented that while the Judges might not have found the compilation pleasant reading I thought it should have been of some value to them. The Attorney-General at first reacted sharply to this comment and reiterated his earlier suggestion that the Executive was maliciously disposed towards the Judiciary. I rebutted this with some vigour and he stated that he accepted my viewpoint.

(13) To summarise:

I think I may have conveyed to the Attorney-General certain aspects of the problem of which he was not previously aware. I was, however, left with a distinct feeling that he believes the problem lies in personalities rather than issues and that he does not contemplate any action other than to re-affirm that the Executive must support the prestige of the Judiciary at all times, both by refraining from critical comment on the workings of the courts and by constantly endeavouring to convince the indigenous population of the unswerving wisdom of the courts' decisions.'

'25/6/64'

Postscript

On 28 September 1973 John Kaputin, M.H.A., beginning his Second Reading Speech in the Papua New Guinea House of Assembly introducing the Village Courts Bill 1973, said:

Whatever powers were held by our leaders were stripped from them by the new system of laws. When our people saw that our leaders were powerless, a lot of problems resulted, and the leaders could do nothing. This Bill has been introduced after 20 years to restore power to our people. I am pleased to see this happen; it is now time that we took over to control our laws. I am the new Minister for Justice and this Bill has been introduced to restore power to the villages. ...

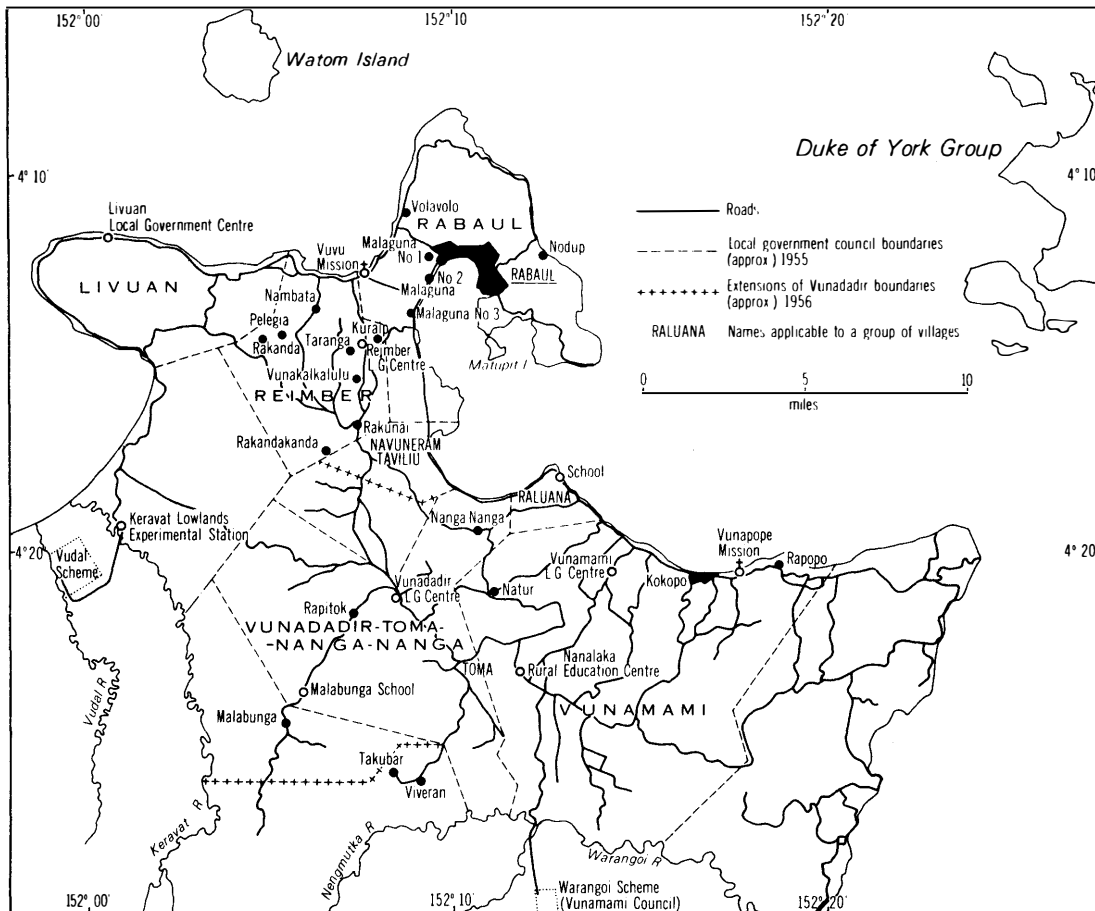
The Government believes that there is strong support for the introduction of village courts throughout this land and this Bill is intended to set up a workable system that will best meet the needs of our people. (H. of A. Debates; Third House, 28 September 1973, p.2881. See also Strathern, 1972.)

Chapter 7

The emergence of the anti-council forces

This is Fenbury's draft heading for a chapter which he had not begun to write, but for which some documents were grouped, and others were available in his papers. The most intractable source of opposition to the establishment of local government councils on the Gazelle Peninsula developed among a number of Tolai villages known collectively as Raluana. There were other 'dissident groups' of villagers, and also 'anti-council forces' among the expatriate population. The situation is well summarised by the following comments on that period in an authoritative study of change among the Tolai:

... however important the motives of the Raluana, and whatever the aspirations that fired them to opposition to the new government policy, an explanation of the movement simply in terms of intra-Tolai relations and developments would be grossly inadequate. ... In Fienberg's view the councils were designed to develop into a comprehensive system of administration, gradually becoming involved in all aspects of indigenous social life - law and order, the regulation of customary usages, the provision of social services, and the financing of schemes for the economic advancement of the area. Conceived in these terms, their establishment was bound to upset in various ways the existing structure of power within the wider community. Thus the missions, which had long enjoyed a virtual monopoly in the field of Tolai education, were plainly unhappy with the trend of development, and it is interesting to note how from the very outset councillors were led to protest at their meetings about obstructionism on the part of various missionaries and their lay catechists. The responsibilities which the councils were to



Map 2 North-eastern Gazelle Peninsula 1956

Compiled by R.S.P. from: Fourmil of Rabaul, Lands Department, Port Moresby, March 1956; Royal Australian Survey Corps 1:100,000, Series T601, sheet 9389 (Rabaul), Ed. 1, 1976; personal communications, Colin Liddle. Council boundaries after Epstein 1968.

enjoy in the maintenance of law and order had in the same way important implications for the role of the police, and here too there was an immediate source of tension. There was also scope for tension even within the Department of Native Affairs, for the creation of a 'specialist' Native Authorities Section to implement the new policy threatened the autonomy to which many officers had become accustomed in the days of village administration. All of these conflicts and cleavages and the personal animosities and antipathies which frequently accompanied or exacerbated them, are an essential part of any serious attempt to understand the anti-council movement (A.L. Epstein, 1969:259-60).

All these groups figure prominently in Fenbury's papers. Attitudes of Administration field staff are discussed in earlier chapters, especially chapter 5. This chapter is based on documents originated by Fenbury and others, and deals in turn with the dissident Tolai groups, with the police and the missions, and with the culminating incident at Navuneram in 1958. Fenbury believed that government weakness toward the opposition seriously jeopardised the positive accomplishments of the local government programme. Its progress to the end of 1950 is summarised in a personal letter to G.W.L. ('Kassa') Townsend, a former New Guinea District Officer, then a United Nations official, who had accompanied the first Visiting Mission to the Trust Territory earlier in that year:

'Dear Kassa,

...

'The local govt. policy has involved me in relentless battling; to-date I've more-or-less won on points though probably at the cost of an ulcer or two. My technique is to try and force a showdown on each particular issue. The regulations, which were ready in Feb. 1950, were finally passed in September. Fortunately they weren't tampered with to any extent. I have Councils established at Reimber (Rabaul area - remember Vunakalkalulu) which consists - or rather covers - 22 villages with a population of about 4000; Vunamami (Kokopo) with 20 villages and about 4400 population; Baluan (off the South Manus coast) with only about 2100 folk involved; Hanuabada (3000). The Reimber and Vunamami Councils are constituted on the basis of one elected (open supervised

ballot) councillor for each village, with a President. In the case of Reimber this latter dignitary (old ToPoi, the ex Paramount Luluai and the member for Vunakalkalulu) was elected from the Council members by themselves; at Vunamami the President - also the Paramount - was chosen as permanent Popa bolong ol by popular acclaim, i.e. he is not the elected member for his village. I worded the relevant Regs. to permit flexibility of this sort in matters of "constitutional detail". Hanuabada's constitution is the most advanced in that representation there is "proportionate". I will aim at attaining that position in Reimber and Vunamami in time to come, but initially it couldn't be done. So we have one councillor for Nambata Village, with 73 bodies, and one for Kuraip, with a population of 335.

'The Reimber Council got its O.K. to tax, declared its rates for the year at £4 for males over 21, £1 for males 17-21, £1 for women who voluntarily made themselves liable for tax by having themselves enrolled as electors (for future elections: in the first the franchise was extended to all adults). It has also collected the tax (99% collection) and is now working on the basis of its approved estimates for 1951, the budget being a £4500 job. (I will attach to this a few figures.) Tax exemptions were handled by a Council Tribunal. Age & poverty, infirmity and "unavoidable hardship" were grounds for exemption. No category of Council area native resident was automatically exempt - the Councillors themselves, Mission teachers etc. were all liable. The Missions were all most interested, and I am getting Mac. to call a second conference of Missionaries, Technical Dept. officers etc. to tell 'em all what it's about. An initial explanatory conference - very badly attended - was held about June 1950. Am also having the Regs. translated and printed in Tolai.

... ..

'Council Meetings are conducted roughly according to Parliamentary rules of debate. I say "roughly", because although the Council wanted it that way the members still tend to go into a series of huddles and to address the chair only after the huddle is finished. To date I would say that perhaps 5 of the 22 Reimber Councillors have a fair idea of what it's all about ... but they are keen, and I'm not very worried on this count - yet. Getting into their skulls that they have jobs to perform other than talking is another tough assignment ...

'Generally, however, educating the Administration into the policy has been much tougher ...'¹

Some months later Fenbury foreshadowed some of the external difficulties that councils might have to face in a memorandum to his Director:

'6. The administrative weakness of the average councillor is not assisted by the fact that beneath the surface of an apparently tranquil native situation the Tolai area is seething with petty intrigue to an extraordinary - and at times amusing - degree. Employing unscrupulous tactics to gain some social or economic advantage is regarded as normal behaviour. An example is the sporadic informing on economic rivals for illicit drinking. (The widespread drinking habit, incidentally, is one vice that Councils have had very fair success in curbing.) Fear of being made a target by undercover pressure groups is probably preventing many weaker councillors - as it does luluais in other areas - from taking the initiative in the exercise of their lawful authority, and there are, at least in the Reimber council area, various moves afoot to unseat the more efficient Councillors at the forthcoming elections.

'7. Over the years the interaction of the various forces that add up to the Gazelle Peninsula 'culture-contact situation' has markedly weakened the traditional authority of the village elders in most of the important aspects of native life; generally speaking - there are a few notable exceptions - for all the imposing pre-war facade of paramount luluais and unofficial councils (kivungs), most of the power that remained to the elders would seem to have been wielded on sufferance. In so far as the launching of the local government policy has meant a redefinition and an enhancement of native civil authority, it must expect to face growing opposition, both from sections of the native population and from interested outside sources, for a considerable time to come.'

Dissident groups - Raluana and others

Paragraph 11 of the same memorandum carries a parenthetical reference to early signs of opposition to councils

¹Fenbury to Townsend, from District Office, Rabaul, 24 January 1951. 'Mac.' was J.K. McCarthy, then District Officer, New Britain.

by a group in the Raluana villages: 'In the whole of the Tolai area to date the only organised request to "defer" the establishment of a council has come from a small clique in the Raluana (Kokopo) village group - the self-styled Raluana Section. The clique is headed by a Sergeant-Clerk employed at the Rabaul Police station, and an ex-school teacher who was dismissed for drunkenness. The motives here are petty and transparently dishonest. The clique, which is antipathetic to Missions, is not without influence, but was discredited at a Raluana general meeting convened by the Paramount Luluai at which its members failed to appear. It is of interest to note that the clique's sole argument - "We are not yet sufficiently educated to handle a council" - is the stock European argument against the policy. The Raluana people are in fact comparatively advanced' (Memorandum, 'Native Local Government', to Director of District Services and Native Affairs, 9 September 1951).

Writing personally to the Director at the end of October 1951, Fenbury already attached greater potential significance to the 'Raluana Section':

There are strong indications of a 'movement' of a sort we've not previously experienced. The movement's leaders, being educated and rational in their approach, are potentially formidable. The movement doesn't yet know just where it wants to head. It may be nothing more than the desire of a crafty clique to retain all power for themselves and not to have their actions regulated, and their authority dissipated amongst a larger group they can't 'sew up', as would be the case if they entered a council, even if they were elected (Fenbury to J.H. Jones, personal letter, 26 October 1951).

This letter was reporting the circumstances surrounding the court's dismissal, earlier in October, on a technical point, of a test case Fenbury had launched over the refusal of the six Raluana villages (where the 'Raluana Section Committee' had collected a tax of its own some time earlier) to attend a census needed to calculate possible future council voting eligibility and tax liability. When his headquarters recommended that Fenbury withdraw an appeal he had lodged, Fenbury pointed out that there was a serious organisational problem. Its context was that non-native interests were now active in arousing opposition to councils

(even though the results had so far been small except in the Raluana villages), and that 'only in those few native areas already covered by Village Councils have we any machinery for demonstrating public opinion on a majority vote basis'. He asked: 'What is the course of action to be in an area where the large majority of the people, including all the village officials, express their wish for a council, but a small and vociferous minority ... are against the idea for reasons that are not susceptible to any further explanatory measures?'; and expressed the view that 'it is unlikely that (on the Gazelle Peninsula) any more Councils will be proclaimed without some dissenting voices being raised. What has to be decided, bearing in mind that all persistent objections to date have been backed by non-native influences, is whether we can continue to work on a basis of one hundred per cent agreement. If not, what is the required percentage to be, and how is it to be ascertained?'

Fenbury referred to groups of adjacent villages where some were pressing to come into councils, while dissenting voices were raised in some interspersed villages, and he did not know 'just what sort of situation might emerge from a patchwork pattern of council areas dotted with odd non-council villages'. He added that in organising a council area two basic factors to be considered were that the people wanted a council, and that 'the proposed Council is a workable proposition from the Administration's viewpoint in terms of mutual interests, population grouping and revenue potential'. The collection of data was essential to calculate tax potential.²

During Fenbury's absence on leave from March to October 1952, M.B.B. Orken was acting Native Authorities Officer in the Gazelle Peninsula, and on Fenbury's return reported to him on 'Problems affecting the extension of Native Local Government in the Gazelle Peninsula'. Part of his memo (which Fenbury forwarded to the Director, District Services and Native Affairs with covering comments) read:

At the present time, the following groups have indicated that they do not desire to join in the Village Council system:

²Quotations are from Fenbury's memorandum to Director, District Services and Native Affairs, 'Native Local Government - Problems of Initial Organization', 5 February 1952.

- (a) Taviliu/Navuneram - Approximately 2,000 people in nine villages of the Rabaul Sub.District.
- (b) Raluana - Approximately 600 people in five villages of the Kokopo Sub.District.
- (c) Viveran/Takabar - Approximately 950 people in two villages of the Toma paramountcy of the Kokopo Sub.District. (N.B. These people, who are less wealthy or worldly than the average Tolai, are expected to join the Vunadadir Council in the New Year).

It is not clear whether the opposition to Councils by Groups (a) and (b), represents the opinion of the mass of the people therein - I am inclined to think that it doesn't - but there is no doubt that a few local leaders, for reasons of their own, are determined to block any extension of the Village Council system to their own villages. (See Rabaul Patrol Report No. 1 of 1951/52 for a discussion of this aspect as it affects Manoa of Navuneram.)

The danger of this situation becomes apparent when one considers the case of Group (a). These people represent a block of dissentients between the already established Reimber Council, and the soon to be established Vunadadir Council. On either side of them, taxes will be levied and collected, and various social services will be set up and paid for by the taxpayers. But Group (a) will presumably continue to have a Government school and Aid Post and other social amenities in their area, free of charge. One would be naive in the extreme to imagine that the privileged position of Group A would not cause angry comment, to say the least, among the adjoining groups who pay taxes and support their own social services.

The Raluans (Group (b)) will also be in a privileged position as compared with the remaining eight villages of their paramountcy (Nanga Nanga) which are prepared to join the Vunadadir Council.

Surely the aim of the Village Council scheme is to weld the native people of their area together, so

that they might develop civic pride and responsibilities side by side with the ability to stand on their own feet so far as the management of their own local affairs is concerned.

But the presence of such groups as Taviliu/Navumeram and Raluana must make the attainment of this aim almost impossible. Such groups are a wedge of native intransigence, which is calculated to exacerbate - and not diminish - the many differences and antipathies which have for so long split Tolai society into so many fragmented groups.

What is the solution? These groups must either be allowed to form a Council of their own, provided they have the requisite numbers and economic potential - or else forced to join one of the already existing village councils. It should be made unprofitable and uncomfortable for them to remain outside the Council ambit, and the best way to achieve this end would be by the reintroduction of the Head Tax (Orken to Fenbury, 11 October 1952).

In Port Moresby the Acting Director of District Services (A.A. Roberts) submitted these documents to the Acting Administrator, reporting that the unanimous opinion of the preceding District Commissioners' Conference was that if, after a complete survey, it was decided to form a council, the majority of people concerned should decide whether objecting individuals or groups in the area should be included. Roberts also endorsed the view that the future of the native local government movement, in particular of the councils already established and functioning successfully, had been 'jeopardised' by the Minister's recent decision not to approve the reintroduction of general native taxation in areas not under councils. He recommended as an alternative course that preference in the provision of education, health, agricultural and other services should be given to areas where councils were established (DS 14/319, Acting Director of District Services to Acting Administrator, 6 November 1952). However, no policy decisions were forthcoming.

In a memo to the Director of District Services in February 1953 Fenbury surveyed his earlier communications on the matter, to which he noted that no replies had been received, and continued:

'6. In the meantime the Raluana movement has continued unchecked, has now taken firm hold in the Nawuneram/Taviliu group, and has evolved to a stage where firm administrative measures will be required to control it. A carefully organised attempt by the "Young Men's Kivung" to seize control of the Reimber Council villages of Rakunai/Rakandakanda (near Nawuneram) and flout the Council's authority has been temporarily checked, but will certainly recur unless action is taken to bring the Movement generally into line.

'7. Except under specific direction, I do not propose, in my capacity as S.N.A.O., to take any measures that can be construed as "forcing people into Councils". Remembering the studied attempts to represent my actions in the Raluana affair as coercion into local government, it has been ironically amusing to hear the Taviliu/Nawuneram spokesmen quoting back to the District Commissioner statements of mine that "I had no interest in pulling people into Councils". As the officer currently responsible for organising local government units and making them going concerns, I will state flatly that I would much prefer NOT to have any of these dissenting groups within Councils at all. Life is already sufficiently complicated for me and the officers working with me. As a District Services officer of some experience, I give my opinion equally emphatically that, beneath the surface, these groups are actually out of Administration control and pursuing a course that is politically dangerous to the whole of the Gazelle Peninsula, if not further.

'8. The Administration is now facing a nasty little problem. Fortunately it is still confined - we think - to only 2000 out of 32,000 natives, and the vast majority of native leaders is still solidly behind us. Firm action is required; unless the Administration is prepared to take this action quickly the ultimate consequences could well be grave. But if action is taken to abolish the Young Men's Kivungs, which are developing - or have already developed - into subversive organisations, and to include these minority groups within existing Councils there will be trouble ...

'9. ... It will be necessary to support fully the authority of any Councils unfortunate enough to be saddled with these people. In my view that will mean police action. Any neglect to do so will completely undermine the Councils; they will sag and ultimately collapse ...

'10. Almost since their inception Councils have complained of the indolence and lawlessness of some of their young men who neither work for wages nor cultivate at home, but spend their time playing the guitar, chasing after women and liquor, cadging food (and tax money) from relatives, or roaming into the town for a few days' casual employment or the chance of some petty thieving. What amounts to a Vagrancy Rule has been intermittently discussed now for nearly two years. I have myself discouraged its passage until the Councils seemed geared to police it; the matter is due to be raised again soon.

'11. The attitude of the Administration towards native employees who are using their official positions to undermine Administration policy has been sharply queried by Nason, until recently Paramount of Nanga Nanga-Raluana, and now President of the Vunadadir Council. He named the police clerk Tongatia and the teacher Tuvi, and asked why they were still being employed in view of what was known of their activities. I have no answer for him myself.' (Memorandum, 'Inclusion of Adverse Minority Groups within Existing Tolai Councils', to Director of District Services, 8 February 1953.)

The A/D/DSNA submitted Fenbury's memorandum of 8 February to the Administrator, along with a six-page report by the D.C. New Britain (J.K. McCarthy) supporting Fenbury's analysis with a detailed survey of the history and current activities of the leaders of the three main dissident groups on the Gazelle. Organised in the Young Men's *Kivings* established under the Japanese occupation, they functioned 'as an administrative and judicial body outside the law', appointing and controlling village officials, levying 'taxation' at formal village assemblies, hearing 'court' cases and apparently imposing fines and penalties. Having failed in visits to the areas to persuade the people to have anything to do with councils, McCarthy sought approval to incorporate the Nawuneram and Taviliu villages in the Reimber Council and the Raluana and Viveran/Takubar villages in Vunadadir, by proclamation, with power to the D.C. to nominate councillors if the villagers refused to elect them. In conclusion he urged that 'the Administration cannot afford to be openly flouted by a comparative [sic] few larrikins and wealthy self seekers who rightly fear that their incorporation into local government will put a stop to their illegal and oppressive activities'. The Administrator promptly forwarded a copy of McCarthy's memorandum to the Minister (2 March 1953).

On 12 March 1953, on the occasion of a visit by the Administrator and Mrs Cleland to open the Livuan Council House, the Administrator met representatives of the five Tolai councils, who raised several matters with him. Fenbury's diary entry says 'H.H. [His Honour the Administrator] gave answers on all points', but does not elaborate. The councillors presented to the Administrator a typed 'Address', 'done out in Kuanua by the executive committees of the five Tolai Councils' with an English translation made by the council clerks, both signed by the five Presidents. (In addition to the Reimber and Vunamami Councils mentioned in the letter to 'Kassa' Townsend, councils had now been established for Rabaul, Livuan and Vunadadir-Toma-Nanga Nanga.) Paragraphs 4 and 5 read:

Now about these people of Raluana and Tavuiliu Nawunaram and Viviran Takubar who will not come into the Councils. All we Councils are very cross with these people and we ask you Sir, what road do these people want to follow. All their talk is gaman only. All the Raluana people have been to school and many of them are teachers. All the people of all these three areas have as much money as we people inside the Councils, but they say they have not. Yet all these people have collected tax, but they do not use it to help the Government. The people of Viviran Takubar collected a £2 tax from all their people only last week, but the Government has not said they can collect tax. And some of these people of Raluana are telling people inside the Councils that the law of the Councils is only gamon, and some of our people are liking to hear them. These people do not want the Government and the Councils to boss them. They want to follow a road of their own like snakes in the grass.

Now the leaders and executive committees of the five Councils would like to say this. We are helping the Government and the Government is helping us. That is the way to come up. But we would like to know why these people are still getting schools and other things from the Government for nothing when they are working against the Government. Some of these men are working for the Government Departments, and we think they should be sacked. (Address to His Honour the Administrator, Mr D. Cleland, from the combined Tolai Councils, dated 9 March 1953.)

A fortnight later Cleland reported to the Minister that he proposed to amend the proclamations of the existing councils to include the dissentient groups in their jurisdiction, and then to 'take gradual steps to bring them in', while 'the native personnel concerned will be quietly transferred to other districts'. The Administrator said he was 'satisfied that if we take this stand ... the opposition will die down in a comparatively short time' (Cleland to Hasluck, 28 March 1953). However when McCarthy (perhaps not so gradually as the Administrator intended) conveyed the incorporation proposals to a meeting of some 1,400 Raluanans on 21 May, a group of the younger men first attacked Nason ToKiala, the Vumadadir council president, who happened to be with the official party, and then assaulted McCarthy, and in turn Fenbury and several other senior Administration officials when they went to the rescue. The brief affray ended when the D.C. managed to send Nason off to safety by car, and about a dozen Raluanans were subsequently gaoled for assault. But the incident had significant features and repercussions.

It appeared that before the meeting had begun two Raluanans had been despatched with £100 from the Raluana Section Committee's funds to Rabaul, 16 miles away, where about half an hour before the riot occurred they briefed a private legal practitioner 'to help the Raluana people from being put into a Council' (McCarthy to Cleland, DS. 31/1/134-11, 28 May 1953). The same solicitor was subsequently summoned by telephone from Rabaul police station to arrange the defence of one of the charged men; on the next evening Police Sergeant-Major Tongatia (allegedly a leader of the dissident movement) held a meeting of the Raluana prisoners at the police barracks. A second solicitor who took over the defence cases complained to Port Moresby (without substantiation) that the accused were not being permitted representation. The first solicitor issued a summons against McCarthy for assaulting Tuvi, the native teacher charged with assaulting McCarthy. The Rabaul Superintendent of Police (Normoyle) suggested to McCarthy that he should withdraw his charge against Tuvi. McCarthy refused, and Tuvi was ultimately convicted and imprisoned by the Supreme Court. McCarthy himself was committed for trial, but in the light of the other case the Crown Law Officer entered a *nolle prosequi*, dropping the charge (Phillips to Hasluck 26 March 1954). A few days after the Raluana incident a combined meeting of the five Tolai council presidents and executive committees issued a statement to the press 'on behalf of 27,000 natives',

condemning the 'vicious attack', asserting that the Raluana natives were under the influence of 'disloyal educated men including police NCO and some Raluana born government and mission teachers', emphasising that 'ninety-six per cent of the Tolai people strongly support Administration's council policy', and demanding strong action against all the people concerned in the riot.

On 8 June the Administrator appointed A.A. Roberts as a Commissioner 'to inquire into and report upon the influences governing the decisions taken by native groups in the District of New Britain with respect to the implementation of the *Village Councils Ordinance*, 1951, and any other matters relevant thereto', specifying that 'such Inquiry shall not be held in public'. At the same time he appointed Roberts to be his Deputy to exercise 'the powers and functions of the Administrator with regard to matters relating to District and Native Administration in the District of New Britain'.

Fenbury wrote to the D.C., Rabaul, urging that instead of suspending local investigations until Roberts arrived, 'a considerable amount of painstaking police investigation, of a police-enquiry kind', should 'be done before the official enquiry is commenced'. He continued:

'4. I am a little fearful that the existence of certain complications in the Raluana affair may tend to deflect Administrative attention from the basic issue. The basic issue, as most of the native population see it, is that of the strength of Government authority. Thousands of natives, including many of the migrant mainland labourers, with little or no knowledge of either the local government policy, the intricacies of the Raluana affair, or of legal processes, are keenly interested to see what the Government will do to a defiant group with sufficient money and "know-how" to resort to force and then hire themselves legal assistance (the efficacy of which is greatly overrated). Rumours are being busily circulated that nothing will be done, that the days of "strong" Governments are over.

... ..

'5. ... Any apparent lack of firmness by the Administration in handling this Raluana affair can have - will have - repercussions throughout the Tolai area and, less directly, in other districts. The Raluanas themselves are boasting that

they will "win" as they did in 1951.'³

On 30 July the Administrator made a statement to the Legislative Council on 'Village Councils and District Services' (sending Fenbury a copy under cover of a personal note next day), and announced the results of the Roberts inquiry:

6. The finding of the Commissioner is that the following primary influences governed the decisions taken by the minority groups:
 - (a) That the native people residing in the Raluana area, Navuneram/Taviliu area and the Viveran/Takubar area are guided by the advice of advanced natives.
 - (b) That inherent characteristics of the Raluana group of natives have developed into an outward opposition to the adoption of Village Councils through misunderstanding and lack of confidence in the proposed form of Native Administration.
 - (c) That the Raluana group have influenced the other groups referred to in (a) above, in reaching their decisions.
 - (d) That native groups who willingly adopted the Village Councils did so because of their unshaken confidence in the Administration.
7. In addition the Commissioner found certain contributory influences. They are inter alia -
 - (a) Misunderstanding between native groups adjacent to one another leading to reluctance and later outright refusal to be linked together under one Council organisation; and
 - (b) Incorrect and undefined official relationship between the District Commissioner and an Headquarters officer, namely the Senior Native Authorities Officer.

The Administrator reported a further development:

³Fenbury to McCarthy, DS. 14/11/6, 5 June 1953. The "'win" ... in 1951' refers to the unsuccessful census prosecution Fenbury had initiated.

9. I think members should know that when the Minister and I were in Rabaul on our recent trip - the Court case being over - we invited the peoples of the three dissentient groups to meet us. The meeting took place on the same ground where the incident occurred and was attended by approximately 1200-1500 natives. We explained that we desired to hear their views and the reasons for standing out from the system. Each group had its own spokesman. All three advanced the same story namely: that Village Councils were good but they did not want them yet because they did not consider they were sufficiently educated; and that if they did join they would be going out of or away from the Administration.

10. They were informed in reply that 27,000 other Tolais of their own standard of education had joined Councils and were running them successfully; that they themselves were running the most successful Co-operative Society in the Territory and therefore if they were sufficiently advanced to do this then they were sufficiently advanced to run their own Council; and that by joining a Council they were not leaving the Administration because Councils were part of the Administration and were run under our control and guidance.

11. After these points were put to them they were invited to nominate ten of their leaders to meet the District Commissioner in an endeavour to settle the issue. This invitation was accepted without further debate. The meeting will take place very shortly. Their acceptance of this invitation is a step forward.

However, on the Gazelle Peninsula the local political situation continued to deteriorate.

Documents emanating from it included a letter to the Administrator dated 23 September 1953 signed by the six Raluana *luluais* complaining about actions of the District Commissioner and his staff, and a letter signed by twenty-seven Raluana people dated 2 January 1954 addressed to the Prime Minister of Australia on the councils issue. Orken, who was then acting A.D.O. for Kokopo sub-district, noted

that some signatories of the latter subsequently told him that they signed the letter under duress from Raluana Committee leaders without having been told what was in it. He and J.K. McCarthy, the D.C., continued to draw the attention of headquarters in Port Moresby, over this period, to what they saw as an increasingly urgent need to come to grips with the dissident groups. For example Orken, in a letter dated 14 December 1953, writes: 'I feel that unless the strongest possible action is taken by the Administration, then sooner or later there will be a serious breach of the peace at least, and very probably an outbreak of subversive activity which might well lead to loss of life'.

The Administrator's notes for a press release dated 16 January 1954 record a visit he and the D.C. made during the previous two days to the Kokopo area 'to conduct "on the spot" negotiations with the leaders of the Raluana group of villages'. After several paragraphs on the importance of maintaining and extending the native local government system, and deprecating past activities which had tended to cause bad feeling between the Raluans and their fellow Tolai, the notes report that Cleland told the meeting that on his return to Port Moresby he would sign a proclamation incorporating the six Raluana villages in the Vunamami Council.

This was one of several proclamations signed on 23 January 1954 and gazetted on 4 February, revoking existing provision for three of the councils and designed to reconstitute them into three new councils embracing larger areas, including Raluana and other villages where some anti-council sentiments had been expressed. On 6 February the D.C. Rabaul informed D/DSNA and the Acting Administrator in Port Moresby that village representatives and others, gathered at the District Office, Rabaul and sub-district office, Kokopo, had refused to accept copies of the proclamations or had taken and thrown them on the floor.

A further complication that soon emerged was that the Administration, by procedure used in the proclamations, had unwittingly left no legal existence for the old councils until the new councils could be elected. No provision had been made for a caretaker period, or for the assets of the abolished councils to be taken over by the newly proclaimed units. The Acting Administrator (Chief Justice Phillips) met this problem by amending the proclamations to legalise

the continuance of the existing councils, and by suspending all action to implement those parts incorporating the dissident groups. He had already received petitions carrying 3,644 names from fourteen villages in their areas requesting a stay of action until they could consult 'eminent Queen's Counsel in Australia'. Phillips referred the petition to Cleland (on leave in Australia) who confirmed the holding actions already taken.

These events only sharpened the tensions between the indigenous groups on the Gazelle, with the Administration inactive between them. Phillips received a letter from two of the council clerks sarcastically asserting that 'some of this petition is lies only and most of the people do not know what it is all about, only the bosses of the Raluana Government and Mr James [the Raluana's solicitor]' (E. Michael Tibu & Isimel Towaa'i to Phillips, 24 February 1954). Soon afterwards the five council presidents wrote to him to declare that they and their fellow councillors and clerks would resign, drop all work and close the council houses on 8 March, ending with a touching blend of poignancy and irony:

... and Mr James will set up a new things at Raluana to rule the New Britain District.

All your books, the Queen's pictures, the flags, and the medals which were awarded to us we will returning with all these things and heaps them at each Council chambers.

We are saying good bye to you, and if any troubles will happening later, please, Sir, do not take notice of it, like you did to the Raluana (Nason Tokiala, ToLongoma, John Vuia, ToVin ToBaining, Paulias to Phillips, 27 February 1954).

A memorandum of Fenbury's to the D.C. New Britain, written on the same day, showed at some length the chaotic effects on the Gazelle of fumbling and indecision in Port Moresby and Canberra - complacently characterised in those places as seeing that 'nothing should happen until the Administrator's return', as keeping 'the whole matter ... strictly sub judice', as merely finding a formula to unravel a legal hitch:

'4. I wish to point out that to regard this matter as purely a constitutional and legal problem is over-simplifying the

local situation. The immediate local situation arises from a sudden major reversal of Administrative policy. This is not the legal position, but it is the administrative one, as natives will see it. The facts of the local situation are:

- (a) The "Raluana situation" has been a fester in local native affairs for some two and one half years;
- (b) The underlying issue has never been simply a matter of certain natives not wishing to enter a council, and it has never been regarded as such by the native population.
- (c) Since September 1951, on the basis of observed facts, Hq. has been repeatedly advised that the Raluana Movement, irrespective of what guises it adopts, is essentially subversive in character, and that the basic issue is one of maintaining Administrative control over the native population generally.
- (d) The "Movement" predated the N.V.C.O. The establishment of councils simply forced it into the open. It is therefore fallacious to regard the present situation as simply an attempt by villagers to resist by constitutional means the application to themselves of administrative measures they dislike.
- (e) The "Movement's" revolutionary character is indicated by the constant urge of its adherents to proselytize natives in council areas as well as others.
- (f) To the leaders of the 96 percent of the local Tolai population who have remained under Government control, the principal issue has been the Movement's repeated successful defiance of the Government, with its repeated (generally unsuccessful) attempts to extend the movement's influence to other areas, partly by direct acts, but mainly by means of propaganda, boasting, and personal abuse.

- (g) In terms of native psychology this "tok bilas" is probably the most important factor in the present situation.
- (h) Council leaders have repeatedly complained of the Raluana Movement adherents' behaviour over the past two years.
- (i) They have been twice assured by the Administrator, once in the presence of the Minister, that the subversive elements would be brought into line.
- (j) The Proclamations of Feb. 4th, heralding this, were widely publicised in the local Press, including the Rabaul News, and copies of the Proclamations were circulated by the Administration.
- (k) The "demonstrations" at Rabaul and Kokopo District Offices, when the proclamations were torn up by the "anti" groups and thrown on the ground, aroused considerable native interest.
- (l) The Press and Radio statements of the past week have informed the people of the latest development, which is being acclaimed by the "Movement" as another victory.'

Fenbury went on to explain in detail the chaos that would ensue for the three councils whose areas and financial plans would again be thrown into uncertainty while the status of the dissident villages was unresolved; and he pointed to the day-to-day difficulties for his staff in treating the whole matter as *sub judice*. He also noted that six of the eleven villages covered by the suspended proclamations had long wanted to come into existing councils, had been promised throughout the previous year that they would be gazetted, had been sending representatives to meetings and at last told they were in the council, and must now be told that they were not in the council. He commented that it was 'not pleasant to watch the results of three years' hard work disintegrate through avoidable causes that are beyond one's control', and gave notice, not for the first

time, that he was 'requesting the Director to be relieved of local government duties immediately' (Fenbury to D.C. Rabaul, DS. 11/1/86, 27 February 1954).

McCarthy had the job of persuading the existing councils to continue in operation, while the Director of District Services ordered Fenbury to move himself and the Native Authorities headquarters and records to Port Moresby in pursuance of the reorganisation plans recorded in chapter 5 (Roberts to Fenbury 5 March 1954 DS. P279). Fenbury countered (DS. 14/11/6/29 of 19 March 1954) by repeating his previous request to be relieved of local government duties altogether, on the grounds that the job was 'unattractive' and 'unsatisfying'. It is instructive to juxtapose some bitter remarks in this memorandum with part of a letter Hasluck had written the day before, to encourage the Acting Administrator in his current course of inaction on Raluana affairs. Hasluck observed:

... It is customary for some folk to talk as though all that is needed to make everything go right in New Guinea is frequent pronouncements of policy. In my view, most situations will turn out right or wrong according to whether or not they are handled wisely and watchfully on the spot ...

Of course action will not be clear unless the understanding of policy is clear. One thing I have personally learnt out of the Raluana situation is that policy about village councils (which I inherited and accepted without close examination for myself) has never been clearly understood nor has it been wholly accepted by some officers. Recently when I asked for some discussion on the subject, most of what I got back was concerned only with the departmental organisation required for native authorities work (Hasluck to Phillips, 18 March 1954).

As Fenbury saw it, the local government policy had been

hamstrung because too many of its implications have not been worked out. Most of the undecided policy issues have been exhaustively set out, year after year. They have been repeatedly

brought up and discussed during the seven periods I have spent at Headquarters since 1950. Their solutions seem no nearer today than when I started. My best efforts have not taken a trick. In the interests of efficiency it therefore seems desirable that, having done the crude pioneering work in the field, I should now make way for an experienced officer with a more delicate touch and more adroitness in lucid exposition.

Nothing was resolved. Fenbury continued in Port Moresby as Senior Native Affairs Officer, and the existing Gazelle councils continued to exist. The leaders of the Raluana and other dissident groups continued to try to discredit the councils among their fellow-Tolai. The District Commissioner of New Britain, J.K. McCarthy, before his own transfer to Headquarters in July 1954 as A/Assistant Director of District Services, had swung round to the view, toward which Judge Phillips and the Administrator both leaned, that the Raluana could and should be persuaded to form their own council, even if it did not meet the financial criteria previously laid down. One of the statements of this view (in a memorandum of August 1954) bears Fenbury's subsequent annotation: 'Questions of financial viability apart, the notion that the Raluana etc. people would be prepared to form a "small council" of their own was wishful thinking by McCarthy etc.' Certain it is that they were still not under any council at the end of 1955 when Fenbury, now A/Assistant Director himself, was again recommending a strategy for proclaiming the dissident groups into neighbouring councils, 'to demonstrate that the Administration is not prepared to put up with a lot of nonsense indefinitely' (NA 14-7-1/1 of 30 November 1955). We return to this recommendation in a later section.

Expatriate influences - the police

Chapter 3 records Fenbury's discussions with J.H. Jones, in December 1949, of some of the implications of setting up local government councils. Among other things, it would be necessary, in the area concerned, to dismantle the old system of government-appointed village law enforcement officials, and to fill the gap with new officials under council authority, perhaps in a 'junior-partner relationship between councils and various central government organisations, including the regular Police Force' (p.31). Fenbury notes Jones's 'unusually frank outburst' acknowledging the

unco-operative attitudes to be expected from the white officers of the force. Although the Regulations eventually passed in September 1950 provided for the appointment of council constables, administrative arrangements to govern their role and their relationships with the regular police force were never completed.

Fenbury's letter to G.W.L. Townsend, already quoted, contains a mention of some early friction between councils and the regular police, particularly an incident at the village of Kuraip:

'5. I have had to promote a first-class stink on the tricks of the local town police, who have been rushing out into village areas and playing hell. The issue was recognition of the Councils as bodies responsible for law and order within their areas. It was hard to see how they could carry out such functions whilst town police continued to break into their houses (Police Offences Ord. Sec. 9A) and plonk people in (our Rabaul bench hasn't been too good) and then use 'em as wash-boys and cooks. After the Reimber Council held a special meeting to discuss the business, I sent in a translated copy of the minutes. It finally resulted in a conference between Murray, Mac and ... Normoyle (... ..) with results which on the surface anyway, are satisfactory. I'm a marked man.'⁴

In October 1951 Fenbury reported to Jones (now Director of District Services and Native Affairs) how the Raluana people had refused to assemble for the census the previous week, and drew some inferences from his preliminary investigation for the census prosecution. He wrote in a personal letter:

'I have mentioned in other correspondence that I suspected European influence behind the declaration "We aren't educated enough yet" of the four natives (none of them officials) who have assumed control of the "Raluana Section Committee" and hence control of the six Raluana area villages. ...

⁴Fenbury to Townsend 24 January 1951. J.K. Murray was the Administrator, J.K. McCarthy the District Officer, New Britain, and Normoyle the Police Superintendent at Rabaul.

'The investigation before the case indicated:

- i. That a Raluana Sergeant-Major clerk named TONGATIA, employed at Rabaul Police Station (goes home each night) was instructed by Normoyle some months back to oppose the establishment of a Council over Raluana.
- ii. That TONGATIA, hitherto a respected (and respectable) but not dominant member of the Raluana community then proceeded to dominate the Committee.
- iii. He gathered as aides three blokes who fall within the category of a disaffected semi-educated elite. Two are ex-Govt. school teachers (one has a bad record both before, during and since the war) and one is an ex-Mission teacher.
- iv. This group of 4 completely dominates the Raluana population, and has some means of enforcing its decisions. Nobody will say just what they are.
... ..
- vii. ... I could get little positive information from the officials. They are too scared to talk. The Big 4, however, were obviously scared that they might talk, and became so barefaced in coaching and pep-talks during the investigation (held at Rabaul D/Office) that I finally arrested them and charged them. (One other man had been nabbed earlier.)
- viii. When the arrested men were sent to the gaol the whole committee (some 40 young men) who had come in of their own accord marched behind them, demanding to be locked up also. TONGATIA then appealed to Normoyle, who soothed him with suitable official words. BUT, the whole demonstration, including the descent on Rabaul of the whole committee when the luluais were sent for, was organized by TONGATIA' (Fenbury to Jones, 26 October 1951).

Fenbury added, however, that he thought Normoyle had 'promoted the anti-Council line from motives of simple mischief, and has no idea of what he has started. I

don't for a moment suspect old Normoyle's loyalty. ...'
 But the documents show that Fenbury continued to believe that police headquarters at Rabaul remained sympathetic to the anti-council forces, and at times offered them aid and comfort, as suggested by the account already given of the Raluana riot of May 1953 and its aftermath.

Expatriate influences - the missions

In September 1951 Fenbury made some prophecies about the attitudes of missionaries to the promotion of councils, and reported some early tension between elected councillors and the Catholic mission:

'8. There are already ample signs that the local government policy is being viewed with increasing interest and suspicion by Mission bodies in the areas. (The Tolai country must be surely one of the most heavily occupied, evangelically speaking, of all.) Steps were taken at the beginning, in conferences and discussions, to inform representatives of commercial and religious organisations of the policy's significance, and there has not been any friction between Missionaries and Administration officers over the matter. Initially it would seem that the Missions were disposed to regard the policy as probably amounting to little more than an empty official gesture of post-war liberalism, but their attitude has since changed, and I suspect that they now tend to deplore the native local government movement as a threat to their own authority and to Mission finances. This, bearing in mind that the local Churches have, over the course of seventy years, assumed control of aspects of daily native life that, in our own society, they have long since had to relinquish, could ultimately prove to be the case.'

... ..

'11. The inevitable reactions by Mission organisations have been slower than might have been expected, but - at least in the case of Vunapope - have become more clearly apparent following the recent visit of the Minister. In an address presented to him by the Rabaul and Reimber Council Presidents a deprecatory reference was made to the ill-considered action of a native catechist (not in a Council area) in disclosing "Tumbuan" secrets to women (he was in consequence beaten by some enraged villagers who were in turn charged and gaoled for assault). I believe the Bishop of Vunapope took strong exception to this criticism of the catechist by the Councils,

and to the terms of the Minister's letter in reply' (Fenbury to D/DSNA, 'Native Local Government', 9 September 1951).

A few months later Fenbury reported greater activity among some of the missionaries on the Gazelle: 'In areas where Councils have yet to be established, this activity has frequently been hostile and has taken the form of instructing certain teachers, agents, employees or adherents to object to the local government policy's application, using pretexts such as "insufficient education" or "insufficient income" as propaganda, and threats of punishment in this life or the next as sanctions. In those areas already under Councils, propaganda has been directed against Council taxation and against the characters of individual council members' (Fenbury to D/DSNA, 'Native Local Government - Problems of Initial Organization', 5 February 1952).

Education became a serious issue between the Vunapope mission and the councils, who set out their views in the Address to the Administrator already quoted:

The Bishop of Vunapope has said that he is strong for the Councils, but some of the Fathers are stopping Catholic children from going to Council schools. Their parents want them to go because the Mission village schools have not good teachers, and after two or three years at Mission village schools the children are not learning any more. But some of the Fathers, like the father at Matupit, tell the parents that if they let their children go to Government or Council schools they cannot have the sacraments, and the people are too frightened. We say that if the parents of a child want to send that child to a Council or a Government school it is wrong for the father to fasten that child. That has been done for many years, and now there are not many old Catholic people with good education. Some of the new Catholic schools like Vuvu are good, but not all the Catholic children can go to these schools (Address to His Honour the Administrator, Mr D. Cleland, from the Combined Tolai Councils, dated 9 March 1953).

According to one of Fenbury's annotations on the documents, political pressures applied at the centre of government in Canberra, with a view to curbing local government work in Niugini, included letters from Bishop Scharmach, Catholic

Bishop of Rabaul who resided at Vunapope, 'to some Liberal members of Federal Parliament (informant the late M. McColm, M.P.)'. Their tenor is presumably indicated by an unsigned carbon copy of a letter annotated in Cleland's hand 'Recd from Bishop Sharmack [sic] 16/7/53', which reads in part:

Here and now in the Territory of New Guinea we witness the sowing of the same trouble they are reaping in Kenya. Our New Guinea Council Ordinance has been modelled after that of other British Protectorates and Colonies including the Solomon Is., Tanganyika and Kenya. To this last place Mr. Fienberg was sent to study the Council and Council Schools.

The people were very ignorant about the whole procedure when the first Councillors were elected. According to the Ordinance they can be elected by the people or nominated by the Administrator. Acting on behalf of the Administrator, Mr. Fienberg nominated candidates quite a number of whom were rejected by the people as scoundrals [sic], and with whom enmity to religion was a leading qualification.

It would be difficult to prove what instructions Mr. Fienberg gave them, but what the councillors told the people is public knowledge. From the beginning they claimed to be supreme legislators. Neither Government nor Religion should be allowed to interfere.

It is true that we have not the Maumau here. But we have its very counterpart in the Tumbuan. This also is a secret, superstitious and criminal society opposed to the Government and Religion. ...

Unlike the African Maumau, the local Tumbuan terrorists have not so far placed the expulsion of all white people explicitly on their programme. But it only needs the activity of a Communist agent to introduce this and aim at the destruction of Government and Mission authority simultaneously.

We see another parallel in the Council schools established by the local Councils; in Kenya these Council Schools proved to be the Breeding places

of the Maumau terror and hatred for Europeans. Here too they are founded with official approval, according to the Education Ordinance.

The letter went on to argue the unreasonableness of refusing to use council taxes for Catholic schools, and ended: 'At present the Council Schools are based on a Government syllabus. But for how long will they continue thus? Have they not a perfect right to conduct their schools in a real native way - based on folk lore, sacred customs, black magic and Tumbuan terrorism?'

Fenbury, of course, had not been sent to Kenya, and Cleland noted other factual errors on his copy of the letter, for example that no Tolai councillors were nominated by Fenbury (or by anyone else in the Administration) - all were elected by the villagers; and that councils did not conduct schools or pay teachers themselves. As to the Tumbuan, Colin Liddle, who served on the Gazelle at the time, notes that this is a secret society in which all Tolai males were, and still are, involved to a greater or lesser extent as part of the whole Tolai culture. They commence their initiations into Tumbuan in their teens. Women are forbidden any knowledge about the society and barred from Tumbuan areas. In the early 1950s the Catholic mission forbade its adherents to have anything to do with the society. Noting this fact in September 1951, Fenbury's comment was that 'the surviving elements of the "tumbuan" institution (hitherto tolerated by missions) ... appear to be quite innocuous'.⁵

Fenbury further discussed the hostility of missions in some notes prepared while on duty at the Department of Territories in Canberra, under the Minister's instruction, in November-December 1954. He thought this must be regarded as a major problem, and offered a more extended diagnosis of it:

'2. The basis of the hostility lies in the theocratic outlook inherent in most professional Christians. In a primitive tropical context this tendency has much greater scope than in most European societies, where the battle was fought out a few centuries ago. In most of the every-day aspects of native life in "controlled" areas, Mission authority has been supreme.

⁵Liddle, personal communication, through Mrs H. Fenbury, December 1976. The Fenbury comment is from his memorandum 'Native Local Government' of 9 September 1951.

... ..

'4. The inter-denominational character of all councils thus far proclaimed, together with the constant attention paid to council areas by the Administration, has made it impossible for any particular Missionary to assume complete backstage control over a Council's activities.

'5. To understand the Mission's attitudes to this development it must be appreciated that in various areas of the Territory natives have been Christians for up to three generations. Church activities feature prominently in the daily and seasonal round. The demands made on the time of the native community for religious instruction and observances, communal labour and periodic festivals were evolved in a primitive subsistence gardening context. The Missions are extremely reluctant to adjust their attitudes to the changing pattern of native economic life.

'6. For example, on the Gazelle Peninsula, Sunday is reserved for worship, with generally two church attendances. One week-day is reserved for cleaning and maintaining the gardens of Mission stations. Up to an hour of each morning and evening is devoted to organised worship. In addition there are periodic feast-days, retreats, special revivals and commemoration ceremonies, processions, work parties on the building of new churches, village mission schools etc. The sanctions applied to the recalcitrant may range from public abuse to organised social ostracism.

'7. Amongst the more emancipated (or, in Mission terms, "materialistic" and "avaricious") natives there is a growing doubt of the value of Mission work when measured in terms of economic and social advancement. The increasing need felt for secular education and the general failure of the Missions to meet that need in the past is one cause of criticism. Mission land holdings, the use made by Missions of annual cash contributions levied from native adherents, the social consequences of Mission interference with native customary usages like exogamous clan marriage, bride-price, divorce etc, and the temporal dictatorships wielded by particular Missionaries and native Mission teachers are additional causes of dissatisfaction.

'8. For the most part Mission control is still too strong for these discontents to be manifested beyond the muttering stage. To date the native public has been largely inarticulate.

The Missions, apparently, fear that the Councils will inevitably become focal points for the expression of inter-denominational native opinion.

'9. As a class Missionaries show little ability to appreciate the real character of the changes that inevitably occur in a native society under culture-contact - changes which they themselves have greatly helped to initiate. They constantly tend to oversimplify the resulting situations and to attribute them solely to the malevolent influence of particular native leaders. There seems to be little or no realisation that these leaders are for the most part thrown up by the situation, and that powerful evolutionary forces are at work. A democratic society cannot flourish without a system of checks and balances relating to the activities of both Church and State.

'10. So far as I am aware only one Missionary - a Seventh Day Adventist pastor on Lou Island, Manus - has openly expressed himself as opposed to the local government system in principle. Representatives of other denominations have paid cautious lip-service to the idea and have attended Council functions. But beneath this apparent endorsement there has been waged a constant little cold war' (D.M. Fenbury, 'Notes on Certain Salient Problems of the Native Local Government System', dated 3 December 1954, at Canberra).

The documents of 1955 provide additional evidence of overt mission intervention and influence, and of indigenous reactions. In March, Vunadadir Catholics had refused to pay the full council tax, pleading to the appeal tribunal (which rejected their claims) that they could afford to pay only part of the tax because they had to contribute to a Catholic school fund (A/DO K.R. Williamson, private letter to Fenbury, 15 March 1955). In September, before the Reimber Council election, the President of the council, ToLongoma, angrily criticised Father Murche at the end of church service for references to the election in his sermon including advice not to be influenced by the Government or the District Officer, and for 'the many occasions on which he had criticised the Government and the Council in private' (ToLongoma to D. Barrett, M.L.C., 26 November 1955: Department of Native Affairs translation from Pidgin, made for the Administrator). When A/DO Williamson arrived to conduct the election at Taranga village on 29 September the electors told him that the parish priest had forbidden one of the nominated candidates, ToMbirau, to stand because 'he was unfit to carry out the

duties of Councillor' - having lived with another woman after his first wife, married in church, had deserted him during the Japanese occupation (K.R. Williamson to A/DO, New Britain, 30 September 1955).

One mission response to local government was to press for council expenditure on denominational schools. Early in 1955 Fenbury received private reports that the Catholic priest at Vunadadir was telling his flock that the new Malabunga school was there to serve the Methodist community (because no Catholics were attending it) and therefore they were also entitled to a school. The mission hoped that the council would erect a school and hand it over to the mission to operate, and three Catholic councillors were actively pressing for council funds to be used for this purpose, or for council to borrow from the Administration. Fenbury's papers also include the English version of some minutes headed 'A Catholic Meeting of the Gunantuna, held at Vuvu', apparently on 10 August 1955. It records the attendance of three priests, and of 'Catechists' and 'Catholic Councillors', and notes that the Bishop and one of the priests had agreed that Matthias should be the Secretary. (Matthias ToLiman, at that time head teacher at Vuvu, was later Ministerial Member for Education in the second House of Assembly and Leader of the Opposition in the third House; he died in 1973.) The meeting discussed council elections, council taxes, and financing of Catholic schools. Several of those present reported that they were pressing the Rabaul and Vunadadir Councils for money to build new Catholic schools, and it was suggested that requests be made to each of the five councils on the Gazelle for £700 to establish new Catholic schools at named places.

Mission pressure on this subject had now reached a point where it provoked a public statement of policy by the Administrator. His central message was:

A Native Local Government Council represents all the people throughout the area which the Council covers through the elected representatives from the various villages. ... Therefore, when it comes to the question of schools, the Councils can only look at it on a broad basis and if they desire to provide schools, then they must provide them on the basis that they are open to all children in the Council area.

My decision is therefore that the Local Government Councils should not allocate moneys towards Mission schools, but that if they want to build schools, then these must be Council schools operated in accordance with the principles governing such schools as laid down by the Administration through the Department of Education (H.H.209 of 22 August 1955, enclosed with a covering memorandum from J.K. McCarthy as Acting Director, Native Affairs, to the DO, Rabaul, NA.14-7-16 of 23 August 1955).

The memorandum which conveyed this statement to the District Officer at Rabaul said a copy was going direct to the Bishop of Vunapope, directed that it be communicated to the councils in specially summoned meetings, and pointed out that as a result of the decision, no appropriations by councils for assisting mission schools could be approved. It also directed that councils be reminded (giving figures for the previous three years) that the central Administration was making substantial grants to help mission schools throughout the Territory, including those in the New Guinea islands - altogether, in fact, 'a great deal more money than all the Councils in New Guinea and Papua have collected since they were first established'.

As Fenbury immediately foresaw (in drafting a memorandum for his acting Director - NA.14-7-9, 14-7-37 - on 7 September) the Administrator's ruling provoked strong reactions on the part of the missions. On 28 September Bishop Scharmach protested to the Administrator, using all the arguments familiar in the contemporary 'state aid' controversy in Australia, and conveying the scarcely veiled threat that 'supporting the native as we do ..., we will not in future be able to prevent him from expressing and adhering to his final conclusion, namely "therefore I will not pay the Tax"'. Scharmach proposed that councils should be prohibited from allocating any money at all to schools if the Administrator would not reverse his decision, and in any case that Catholic parents should receive tax relief where they supported their own schools (Scharmach to Administrator Cleland, 28 September 1955).

Mission reaction was not confined to correspondence. Early in October, when the Livuan Council sent a delegation to the Karo and Naviu villages (in the North Baining), whose leaders had indicated on 20 September that their people

were now willing to join a council, it became evident that the local priest, Father Hagen, had meanwhile exhorted the villagers not to join the council, insinuating that councillors would use the tax money to build big houses for themselves and that the councils were dominated by Methodists. One of the villagers under the council reported a spirited exchange with the priest:

Fr Hagen said that we Catholics were just like cattle. The Methodists had put a ring in our noses and lead us like cattle. He said that Catholics were uneducated while the Methodists were educated. I said 'If you had looked after our education in the past we would know something now'. At that he walked away and there was no more talk (Statement by ToWaninara enclosed with memorandum from A/D.O. Orken, 14/11/6 of 19 November 1955. See also memorandum from A/D.O. Williamson, 14/11/6 of 18 October 1955).

Many similar stories were collected by A.E. Stephens, editor of the *South Pacific Post* (Port Moresby) and published in a special report in the paper on 23 November 1955. The mission pressure imposed considerable strain on the Native Authorities officers on the Gazelle. A few days before publication of the Stephens report, which he had already seen, and anticipating the public controversy it would arouse, A/D.O. Orken felt bound to report to his Director that, simply 'to maintain an uneasy "status quo" with our main objective obviously one of keeping the peace', he had already discussed with the missions certain compromise arrangements before the Administrator's statement of 22 August:

- (a) ... including in Council estimates Contingency amounts which can be made available to Missions, on application to the Council by the Mission concerned, to provide items not normally supplied either by the Mission or the Department of Education. ...
- (b) ... Council schools in Catholic areas could be staffed by Mission trained teachers, subject to overall control by the Department of Education as regards curriculum, etc., and with the clear understanding that the schools were built and owned by the Councils and the teachers paid by the Department of Education.

... (Orken to Director of Native Affairs, confidential memorandum DS 14/11/6 of 19 November 1955).

A fortnight after the Stephens feature was published the Administrator was in Rabaul for a week of conferences. On 13 December he announced a six-point 'Rabaul Agreement', aimed at settling differences between the government and missions on the Gazelle Peninsula but also, as far as the Administrator was concerned, applicable in all parts of the Territory where missions and local government were concerned with education. There is no copy of the original text of the Agreement among Fenbury's papers, and (from an official memorandum three years later) it appears to have been lost in a fire. The following is a summary published in the *South Pacific Post* of 14 December 1955:

The agreement or formula in broad outline:

- (a) maintains the right of Native Local Government Councils to build and maintain Council school [sic];
- (b) preserves the decision that no funds will be allocated by a Council for the building of Mission schools;
- (c) provides for the establishment of a Local Education Committee which will advise the Council in regard to the need and location of schools in the Council area;
- (d) stipulates that such Committee will be representative of the Administration, the Council and each Mission operating in the Council area;
- (e) states that if in any particular area there is a registered Mission school conforming to the standards of a Council school, then no Council school need be established in that area, but the Mission concerned may supply the teacher, provided (a) he is qualified and registered with the Department of Education and (b) that the school is conducted on the Administration syllabus and under the direction of the District Education Officer, with the right to the Mission for religious instruction but without

interference with the approved syllabus; and also with adequate protection and safeguards to any minorities attending such schools;

- (f) provides that a Council may assist any other registered Mission school by way of services rendered or by supply of materials and equipment on the recommendation of the Local Committee. But in no case will there be an actual grant in cash. If a Mission school is so assisted in kind or by services rendered, then for the year in which that service is rendered or assistance given, the Mission concerned will forego the Grant-in-aid which it is entitled to receive from the Administration for that school.

The Rabaul Agreement represented an uneasy and not entirely viable compromise. The missions did not in fact avail themselves of its provisions except, to a very limited extent, those listed under (f) above. The Catholic Mission still sought to limit the activities of local government councils as much as possible while gaining whatever benefit it could from them. These attitudes were rather blatantly expressed a year later in a letter from the Bishop of Vunapope to the Administrator which also attempts to play down the reported indigenous resentment and sectarian tensions provoked by the mission's own activities:

Your Honour,

Several months have passed since your last visit to Rabaul. It has been a period which has given support to your expressed view that in the Gazelle Peninsula the tempo of native development is basically sound and secure. As you know at no time was it considered otherwise by the Officers of the Administration or by members of the Catholic Mission.

The discredited Stephen's Report [sic] of native unrest and alarm appears in retrospect almost as a comic incident. The sectarian issue highlighted by the Reporter which might indeed have given subsequently cause for uneasiness, has not affected the social relations of groups of natives of

different faiths. This is a tribute to the natives' own good sense and the moderate attitude adopted by Administration officers and Missionaries in the immediate post 'stir-up' period.

... ..

I join with you in the hope that the Native Local Government Councils may prosper in the Gunantuna and in other parts of the Territory, with strict adherence to the Ordinance, Regulations and Rules of the Councils; with Officers acting in an advisory capacity and permitting full play to the development and expression of native thought, native ideas, native concepts of equity and justice according to tribal law, in other words a native philosophy of life, where this is not in direct conflict with Christian ethics and the peoples' own good. I am of the opinion that the views of the native peoples themselves should be most carefully weighed particularly in respect of the tempo of development of the village Council System. To do otherwise would be to run the risk of interfering with the natural right that a person has to live as a free man. I believe that Councillors, freely elected should be clearly instructed that their authority is limited to their deliberations within the Council Chambers. This I think is most important, and to encourage or even permit any other attitude or to countenance the least exercise of authority by Councillors outside the limits set by the Ordinance, would be to court disaster for the Council System.

By this letter I wish to express to you the official view of the Catholic Mission in this Vicariate, that as the Councils are rightly constituted Governing bodies they derive their authority from Almighty God. The command of Christ our Lord that men should render unto Caesar the things that are Caesar's and to God the things that are God's are applicable in this contest [sic], whether in respect of obedience to lawful authority or the payment of a just tax. Your Honour may be assured that as the Catholic Mission has done in the past so will it continue to encourage among all men, and the neo-Christians of the Gunantuna, right principles of justice,

respect for law and rightly constituted authority and a rapid improvement in social and economic conditions.

One recalls too, with appreciation, the expressed wish of the Honourable the Minister for Territories, that the policy of the Administration is the betterment of the people based on the practice of the Christian Faith (Scharmach to Administrator, 6 February 1956).

One of the difficulties of the Rabaul Agreement is shown by the last relevant paper in Fenbury's files, a copy of a 1958 internal Minute by another officer in the Administrator's office. He notes 'the determination of the Roman Catholic Mission to see that the principles of Grant-in-Aid by Native Local Government Councils to Mission schools in Local Government areas should be upheld and become effective', and says that 'there does not appear to be any opposition amongst Local Government Council Members to the provision of moderate Grant-in-Aid, provided pro rata reductions are made in Administration Grant-in-Aid to Missions'. The Minute adds that 'there is likely to be pressure from Council Members to have money set aside to assist Mission schools in the Vunadadir area', but points out that under recently-adopted Administration procedures, 'aid made available by Councils cannot be offset against Administration Grant-in-Aid to the Missions in respect of individual schools', and thus, 'unless amended, the Rabaul Agreement cannot be implemented'. As education policy at the time was under review by the Minister, the Administrator adopted the temporising proposal that where councils showed their willingness to do so by majority vote, they would be allowed 'to provide funds for Grant-in-Aid to Mission Schools in their areas up to a maximum figure of £150 without consequent adjustment to Administration Grant-in-Aid, ... on the clear understanding that no precedent is being created and that it is a temporary measure', and provided the £150 in each case was in the form of goods and/or work done but not actual cash (Minute of 10 November 1958, File E/35-1).

Eventually, however, the Local Government Ordinance of 1963 (which came into force in 1965) defined council-mission relationships in the field of education in terms that were based on the Rabaul Agreement.

Interacting forces

Some important points emerge almost incidentally from the discussions in the documents on the anti-council forces. The first is that in some cases their activities tended to reinforce one another. Towards the end of 1955, in a memorandum originally drafted for his Acting Director, Fenbury pointed out that mission opposition was complicated by the existence of the Raluana movement 'which, whilst inter-denominational in character - it is, in fact, dominated by Methodists - is equally antipathetic to the local government system, i.e., to Government control'. He summarised the 1953-54 events surrounding the Raluana movement up to the point when Judge Phillips, as Acting Administrator, issued amending proclamations which had the effect of suspending the implementation of the proclamations issued on 4 February 1954, and continued:

'9. There has been no administrative action since. In the interval, the Raluana movement has made repeated attempts to extend its sphere of influence and has had some success at Rakunai. It is I think a remarkable tribute to the soundness of the local government system, to the good sense of Council leaders and to the devotion to duty of a few field staff officers, that the Movement has made so little headway. Nevertheless, it is now well entrenched, its leaders feel secure, and the dangers, as the Rakunai situation indicate, are increasing.

'10. Without firm Government intervention, the cumulative effects of this Movement's triumphal progress and the Missions' offensive will result in increasing administrative difficulties and an ultimate break-down ' (Fenbury to Assistant Administrator, 22 November 1955, NA.14-7-9, 14-7-37).

Fenbury's observations on a visit to Rabaul in September-October 1955 had linked these threats with other aspects of local government development on the Gazelle, notably the projected Tolai Cocoa Scheme (see chapter 8). He had reported 'that the proposed scheme had been well received by growers and that, providing sectarian issues did not split the Councils and we supplied adequate management, it should succeed'. He was influenced in this assessment by:

- '(a) A combined meeting of the five full Tolai Councils (September 21st) in which the sectarian danger was frankly and amicably

discussed, and the Catholic Kivung members publicly expressed views in line with the Administration policy;

- (b) A well-attended General Meeting of the Reimber tax-payers, predominantly Catholic, with their Council (September 24th) in which, inter alia, similar ground was covered, with satisfactory reactions;
- (c) The satisfactory outcome (from the Administration viewpoint) of the biennial Reimber elections held on September 26th, in which key Government supporters comfortably held their seats in the face of Mission opposition;
- (d) The equally satisfactory outcome of the Vunamami elections, held in October' (Fenbury to Assistant Administrator, 22 November 1955, NA.14-7-9, 14-7-37).

But while the opposition to local government on the Gazelle continued he hesitated to recommend that the Tolai councils assume the liability for the substantial bank loans - to be covered by an Administration guarantee - which would be needed to get the cacao scheme started.

A second point which emerges from the documents of that time is the relationship, as Fenbury saw it, between events on the Gazelle and the development of local government in other parts of Niugini. As he wrote in the same memorandum: '... until this Gazelle Peninsula situation is resolved I cannot see my way clear to formulate and submit concrete proposals for several other areas where more intensive native administration is urgently needed - portions of the Sepik, New Ireland, Bougainville, Manus, Northern, Gulf and Central Districts all involve issues whose handling is dependent on what we do on the Gazelle Peninsula.' Indeed, he expected similar problems elsewhere:

'14. I anticipate obstructionist tactics by missions in any new area where the policy is applied. In New Guinea mainland areas dominated by the Lutheran Mission, which specialises in theocratic organisation, the difficulties may be insuperable unless Government authoritatively states its case. If the system is to be promoted it is essential in my view that there be a precise and detailed Ministerial statement regarding the Government's native policy aims, and the need for Missions

to co-operate' (From Fenbury's 'Notes on Certain Salient Problems of the Native Local Government System', 3 December 1954, written in Canberra).

The third point to note from the memoranda of Fenbury, Orken, McCarthy and their other colleagues in the field is their repeated warnings of the consequences that could follow from failure to deal with the dissident movement, with mission opposition, with the general taxation issue, and with other questions of policy they had raised. There was a note of alarm and urgency, for example, at the beginning of Fenbury's memorandum of 22 November 1955. There had now been another council election, less satisfactory to him than those of the previous months:

'After three years of earnest effort, Fr. S. White, representative of Vunapope Mission at Vunadadir, has succeeded in introducing militant sectarianism to the Vunadadir-Tomananga Nanga Council. As a result of the recent elections, the 24 Council members include a majority (13) of Catholics who have been carefully organised along exaggerated Catholic Action lines, and we may expect a stepping up of attempts by the Mission to split the Councils.'

Fenbury believed that this Vunadadir election result, together with the new militant tactics of the *Katolic Kivung*, was disheartening to 'our nucleus of solid Councillors', damaging to the morale of the local field staff, and a threat to the cacao scheme. He thought the time had come to implement the suspended proclamations of 4 February 1954, which provided for the incorporation of the various dissident villages under the jurisdiction of existing councils. He proposed a firm strategy for resuscitating and enforcing the proclamations. He pointed out that when Judge Phillips had amended the proclamations in order to reactivate the existing councils, five villages which had voted strongly at a plebiscite in January 1954 in favour of coming under a council had been arbitrarily excluded from the Vunadadir Council area; they should be brought under that council. But the first step should be to bring the relatively large Taviliu and Nawuneram groups - the only dissident groups in the Reimber area - under the Reimber Council, in order to isolate the coastal Raluana movement from its hinterland satellites. In this connection he repeated previous references to a significant figure: 'Mano of Nawuneram, a sinister old man of considerable wealth and influence, is the real native leader of the anti-Council movement in the Reimber and

Vunadadir areas. He is not affiliated with the Catholic Mission, although their interests seem to have become merged at Rakunai', where there had been resistance to paying council tax, overcome in that instance by firm field staff action. Once matters were adjusted there, the remaining hinterland villages should present no problem - leaving only 'the hard-core Raluana movement on the Kokopo beach' to deal with.

Necessary conditions for the success of this strategy, Fenbury believed, would include: '(b) A statement by His Honour the Administrator to be read at each of the dissident villages; (c) The officers doing the work to be accompanied by a strong police patrol under the command of an officer of the Regular Constabulary; (d) Any attempts by natives to foment disturbances at any of the gatherings to be dealt with by legal process on the spot; (e) Any natives convicted and imprisoned as a result of charges arising out of implementing the proclamations to serve their sentences in gaols on the New Guinea mainland.' In addition the Administration should be prepared to nominate representatives to the council if the anti-council groups in the villages did not. Fenbury concluded: 'The acid test will be tax-collection ... In the native mind the payment of tax is the essential mark of belonging to a Council, but we cannot force any immediate tax issue' - because under the Ordinance a council had to be in existence for some months before it could levy taxation.⁶

In the event, five pro-council villages excluded from the Vunadadir Council's jurisdiction in March 1954 were proclaimed back under it in July 1956; no such steps were taken as Fenbury recommended to incorporate Nawuneram and Taviliu under the neighbouring Reimber Council.

A sequel - Navuneram, 4 August 1958

Navuneram (spelled Nawuneram in earlier documents) was one of the villages areas which had remained outside the Gazelle local government council system, under the influence partly of the nearby Raluana group and partly of its own most notable entrepreneur, Manoa (sometimes written 'Mano').

⁶Quotations are from Fenbury's memoranda NA.17-7-9, 14-7-37, first drafted 7 September and forwarded to the Assistant Administrator on 22 November 1955, and NA.14-7-1/1 of 30 November 1955.

In 1957 Canberra had at last approved of the imposition of a universal head tax on male Territory residents (including expatriates), to be rebated to the extent that they were paying council tax. The Personal Tax Ordinance came into force on 1 January 1958 and the District Officer, New Britain, assessed the Rabaul sub-district, which included Navuneram, at £2 a head. From the beginning the Navuneram villagers, led by Manoa, refused to pay this tax, and although court judgments were given against Manoa and a number of others in June and July, they maintained that they did not even recognise any exemptions the Administration might allow under the ordinance, and rather than acknowledge the legitimacy of the tax would prefer to receive no government services at all.

At conferences at Administrator level in Port Moresby, and at District level in Rabaul, it was decided that if the Administration's writ was to continue to run on the Gazelle the tax must be enforced. After villagers forcibly defeated one attempt to distraint property in default, an expedition including the District Commissioner, the District Officer and several ADOs, the Commissioner of Police (the same Normoyle who was earlier Superintendent at Rabaul) and a detachment of eighty armed police proceeded to Navuneram on 4 August, with a view to arresting tax defaulters, holding courts on the spot, and forcing them to pay or be imprisoned (under s. 16 of the ordinance which had not been invoked up to that time). In the melee that ensued with a crowd of people from other dissident villages as well as Navuneram, two Navuneram men were fatally shot and others injured by rifle fire.

The Administrator formally appointed the Chief Justice, A.H. (later Sir Alan) Mann as a Commission of Inquiry into the circumstances leading to the Navuneram affray and the immediate context of the shootings; he also appointed Edward Taylor, a pre-war D.O. New Britain, to explore informally at grassroots level the prevailing attitudes of Gazelle people generally towards the Administration and its ways. When the respective reports appeared the Administrator asked Fenbury (who had returned to Port Moresby early in November from his two-year posting in New York) to comment on them, and in the case of the Mann Report to 'propose submissions, based on the findings ... , regarding future policy handling of the

Tolai native situation'.⁷

The Navuneram affair was not directly concerned with local government councils as the new head tax was the ostensible issue. But there were indirect connections: some of the villagers saw the tax in a vague way as a possible means of 'forcing them into a council'; their resistance to the tax was a continuation of their long-standing refusal to co-operate with the Administration in the establishment of councils; and Fenbury saw the episode as an inevitable culmination of Administration vacillation over local government policy - and government policy generally - on the Gazelle. In addition his comments on some of the findings of the Navuneram Commission of Inquiry illustrate sharply the differences between his own diagnoses of the nature of Gazelle dissidence and those which, for the most part, found favour with the authorities at Port Moresby and Canberra. The following extracts are confined to the aspects of Navuneram and its aftermath which are related to the resistance to local government councils since 1951.

Fenbury's opinion of the Mann report and of the events leading up to it is most succinctly conveyed in a personal letter to the Minister (P.M.C. Hasluck) dated 30 December 1958:

'The Commission's Report is a most extraordinary document. I've no comment on the findings relating to the incident itself, beyond noting that a couple of them don't seem to be supported by the evidence taken. But the reasons, conclusions and findings relating to the background circumstances out of which the situation developed are based almost entirely on speculations which were not subjected to verification by any evidence at all. It seems most odd that not a single native witness outside the Navuneram-Rakumai folk and the police was

⁷Territory of Papua and New Guinea, *Commission of Inquiry Navuneram*, in eight volumes (1-6 Evidence, 7 Exhibits, 8 Commissioner's Report and Index), n.d. [5 November 1958], mimeo; confidential Memorandum from Fenbury to Administrator, Port Moresby, 'Commission of Inquiry, Navuneram', 5 December 1958; Edward Taylor, Confidential Report to Administrator, Present attitudes and thinking of the Tolai people - enquiries into, Rabaul, 25 February 1959; Fenbury, undated and incomplete Minute to Administrator on 'Mr Edward Taylor's Report' (not quoted here).

called: no Raluana, no Council big shots, - not even John Vuia, although Manoa brought him well into it. Neither was McCarthy called (he wanted to give evidence) and the couple of junior field staff with intimate knowledge of the background who gave evidence were warned beforehand not to talk too much.

'If the Report is at all correct in its analysis of the background factors, most of what I said and wrote on the subject during some four years close association with the Tolai area must be fictitious. I must then be regarded as either irresponsibly vicious or grossly incompetent, and should be sacked.

'We bought the Navuneram affair quite simply - the cumulative effects of some years of weakness, vacillation and petty dishonesty. Any experienced field officer with an ordinary tradesman's competence could have predicted it. Well, I predicted it long ago, and I simply love the Report twist that, by predicting it, I helped to cause it.

'The general Tolai situation, with some 90% of the crowd our way, because we've organised it that way, is as good as we're now going to get anywhere. But if we handle other spot difficulties as ineptly as we've handled this one - and I'm simply repeating here what I've said since 1951 - then the skids may be further under us than you think.'

In his official memorandum on the Mann Report Fenbury summarised his own diagnosis of anti-council dissidence, to which he still adhered, in the following passage:

'... For more than four years (1950-54) I was, as Senior Native Authorities Officer, primarily responsible for the expounding, organizing and implementing of the local government policy on the Gazelle Peninsula. During that period I repeatedly made representations, based on close and continuous contact with the whole Tolai area, regarding certain aspects of the dissident group situation. In barest outline they amounted to this: that control over a small section of the Tolai people (the six Raluana villages) had been assumed by a small clique of educated natives; that the Raluana people had been originally instructed to reject the native local government policy by a Sergeant-Major of Police, TONGATIA, who had assumed a dominant position in the clique; that TONGATIA was acting under the instructions, and with the assistance, of European police officers at Rabaul Police

Station, under the command of Superintendent Normoyle; that the clique had won the allegiance of the young hoodlum element and was actively proselytizing in other areas; that our 'voluntary participation' approach to the implementing of a policy that involved taxation, without any background of general taxation, left the policy peculiarly vulnerable to hostile propaganda; that anti-council propaganda was being spread by certain Raluana school-teachers and Mission teachers posted over the Tolai area and elsewhere in the Territory; that the antipathetic attitude being displayed to the local government policy by a number of European missionaries, particularly those under the Vunapope Catholic Mission, was assisting the Raluana movement to spread; that whilst the movement was not clear where it wanted to go, an immediate danger lay in the appeal the movement's "anti-control" philosophy had for the young larrikin element; that the movement had displayed a skill in organised tactics which indicated non-native assistance; that an element of fanaticism had appeared as its adherents' activities became increasingly resented by the responsible leaders of the Tolai majority; that the implications of the developing situation were serious, and that without firm action the situation would ultimately lead to violence.'

Fenbury then enlarged on each of the above points in considerable detail, listing numerous people and documents that could have supplied corroborative evidence upon each, had the Commission of Inquiry sought it. Alongside his analysis the Inquiry Report appears amateurish, superficial, and erroneous on many points of fact. Fenbury recalls the incidents related earlier in this chapter and 'some fundamental weaknesses in the policy approach laid down for the local government scheme':

'38. ... The basic weakness lay in continuing an approach based strictly on voluntary participation, but involving taxation, against a background situation where there was no general tax, and organized forces antagonistic to the policy, both in its local and general application, had emerged.'

One section of the Mann Report was devoted to alleged fears on the part of Navuneram villagers (reminiscent of those with which the Raluana had previously impressed some of the authorities in Port Moresby) 'of the hostility of surrounding communities'. After disposing of the rather simple-minded speculations about Tolai social structure by which the Commission had explained these fears, Fenbury

proceeded as follows:

'65. ...

- (g) Each of the five council areas is an arbitrary grouping based on common consent, topographical and communications factors and adequate aggregations of population (as far as circumstances permit) in terms of tax revenue. Each council area comprises 20 or more so-called villages (homesteads and tiny hamlets) which vary greatly in numerical strength, which fought each other intermittently in the past, and which have no tradition of bloc solidarity beyond that fostered by 8 years of council activity, and by defensive reactions to minority dissident group aggressions. Even at that, the degree of solidarity is low, and except for constant fostering by Native Authorities officers and the few astute and energetic council members that the local government system sports, would probably fade away.
- (h) The lack of any traditional "area political bloc" situation is indicated by the various alternative groupings of communities suggested by native leaders at the Council Boundaries Conference of 1951. Some communities (e.g. Malaguna transferred from Reimber to Rabaul Council) have also transferred from one council to another, solely on the grounds of convenience, although the people with whom they had fought most in the old days were in the council to which they transferred (e.g. Malaguna and Matupit).
- (j) The hostility now displayed to the dissenting groups by the 90% of the Tolai population in councils arose as a result of the dissenting groups' attempts at proselytization, coupled with their truculent jeering at "the people who build schools with their own tax money whilst we got ours for nothing from the Government". The statements in the (attached) letter to Judge Phillips from the five Council presidents clearly indicate the Council

adherents' bitterness, and its causes.

- (k) Prior to the developments sketched in (j) above there were no significant political alignments whatsoever to justify the alleged fears of the dissenting groups, expressed to the Commissioner, that they were frightened of being overwhelmed by large hostile blocs. The local government policy in the Tolai area was launched on the basis of one representative per village group, irrespective of population disparities. This was regarded by Department of Native Affairs officers as a temporary phase designed to dispel any fears re being "swamped" that might be entertained by small communities. In each case, after a year or two, it was possible to effect reductions in the size of council membership (financially desirable) by obtaining agreement to certain amalgamations of "electorates" while at the same time giving large groups (on the basis of one representative per 250 population) increased representation. This process, involving gazetted constitutional amendments, which Your Honour may recall, was carried out with full native co-operation and no fuss. Finally, the scope of functions and the supervisory methods of the local government system preclude victimisation of any constituent village.

'66. If the above statements are accepted - and they can be easily verified or refuted - then the basic arguments of the Navuneram people, made to the Commission, can only be regarded as the latest of a long string of lying subterfuges ...'.

The relevant conclusions of Fenbury's memorandum were:

'79. From the broad Administration viewpoint, the most disquietening [sic] aspect of the whole dissident case history, to my mind, lies in our inability, in a native situation where some 90% of the population has been favourably disposed to us, to effectively deal with the odd six per cent. In terms of future probabilities, we cannot reasonably expect to achieve a native situation more favourable than the general Tolai situation is at the present time. In most comparable

tropical dependencies in 1958, having 50% of the native population supporting the Government could be considered fairly normal, and having 75% more or less antipathetic is not rare.

'80. To my mind, by far our greatest single error in regard to the dissident group situation has been our inability to convince the leaders of the 90% majority that we are prepared to support them fully, so long as they support us. I readily admit that the services of most of these leaders have been frequently recognized at high level, but they remain unconvinced - and not without some reason - that the Administration, as a body, really approves of their efforts.

'81. In the recent Navuneram episode, little or no regard was paid in official statements to the opinions of the leaders of the vast Tolai majority. This, I believe, was a bad tactical error, and bad politics. In long range terms, we succeed or fail in this Territory according to how we can influence the evolution of majority native opinion. Whatever else the dissident group issue can teach us, it underlines the fact that native public opinion can be given a potent bias by occurrences which in themselves are quite trivial
...

'82. It is recommended that consideration be given to the promulgation, primarily for the edification of Tolai council leaders, of a high-level statement designed to soothe any bruised egos and to resolve some lingering doubts.

'83. In essence, our failure to deal with the six per cent minority quickly and effectively arose from the implementing of a radically new native policy approach without sufficient prior departmental comprehension of its implications, and without ensuring that it was understood and agreed to by all sections of the Administration. One implication here is an urgent need for more effective native policy formulating, co-ordinating and regulating machinery than we currently possess. I would emphasise here that the term "co-ordinated native policy" connotes co-ordination of the efforts of all Administration departments whose functions affect the native population.'

Chapter 8

Councils as development and welfare agencies

The preceding chapters have been concerned largely with the problems of establishing councils, and of getting them accepted in the indigenous and expatriate communities and in the Administration itself. The present chapter, barely sketched in Fenbury's rough plan for the book, was to concentrate on 'the attempt to develop councils as comprehensive developmental and welfare agencies - economic, social, political'.

It was this broad conception of the role of councils that most characteristically distinguished Fenbury's views on local government policy from those of his superiors and from what actually happened to local government in most parts of Niugini. In Fenbury's view elected local councils should not be merely peripheral agencies with minor regulatory and service functions on Australian lines, but the primary medium for development on all fronts, under Administration guidance but also enabling the indigenous population to take a direct part in the framing and execution of programmes for change at the grass roots. In this framework, the discussion of local government policy was inseparable from the analysis of detailed technical problems such as land tenure, agricultural methods, marketing, finance, accounting, education and staff training. It was also bound up with basic questions such as Australia's national interests - for which Niugini, in Fenbury's opinion, would remain crucially important both during and after Australia's own period of rule there. In that light, he argued that Australia would earn the good will of an indigenous population enjoying such tangible benefits as rising welfare and living standards, to which Administration expertise could point the way.

Thus the phrasing of Fenbury's note for the chapter seemed to call for a systematic presentation of his opinions on local government policy as a whole, with examples of his early efforts to put them into practice on the Gazelle, and

of his exasperation at the lack of support from Port Moresby and Canberra. The extracts that follow, all from Fenbury's official and other writings, are ordered upon this general pattern rather than in the narrative form of earlier chapters.

It seems appropriate to begin with a concise summary of the local government policy which in the course of the 1950s Fenbury managed to have embodied in official declarations of aims, although they never received whole-hearted backing in practice. The initial document is followed by Fenbury's enunciation of two broad themes: Australia's long-term concerns and the internal implications of indigenous social and economic evolution. The central sections deal in turn with Fenbury's prescriptions for native economic development, with the essential role of area councils in this process, with the crucial responsibilities of the Administration for technical planning, financial assistance, general guidance and control, and with the preparation of both Administration officials and the native participants for their roles in economic development. Then come Fenbury's accounts of some of the more important economic development schemes he inaugurated under the auspices of the Gazelle councils. Documents are quoted verbatim except that paragraph numbering, side-headings, footnotes and similar distractions have generally been omitted in the interests of readability.

The aims of local government policy

By mid-1959 the official policy was most succinctly set out in the following paragraphs from a memorandum composed by Fenbury and circulated in the name of the Assistant Administrator to all senior officers throughout Niugini:

'Use of the term "Native local government council", whilst strictly functional, has proved to be misleading. A change of title is under consideration. cursory study of the legislation will show clearly that the organisations provided for in the N.L.G.C.O. were never intended to be Territorial counterparts of municipal type local government bodies in Australia or elsewhere, and they cannot be appropriately regarded as falling within this category. Briefly, Territory native local government councils are area instrumentalities, organised along lines calculated to fit the evolving circumstances of indigenous communities. In functions they approximate more closely to certain classes of English and African local government institutions than to existing Australian

bodies, but essentially they must be regarded as a form peculiar to this Territory.

'These councils are, in law and in fact, integral parts of the Administrative structure, and they are to be regarded by Officers of all Departments as Administration instrumentalities, not private or non-government corporations. The ultimate control vested in the Administration over all major aspects of local government activities is clearly laid down in the Ordinance. In a circular instruction issued by the Department of District Services and Native Affairs in 1952 (C.I. 141 of 4th February 1952 - "Native Local Government Memo. No. 1") the aims of the area council policy were defined thus:

to provide a medium for teaching natives to assume a measure of responsibility for their local affairs in accordance with democratic procedures;

to provide area machinery and local funds for extending and co-ordinating services at village level, and hence to enlist active support in endeavours to raise native living standards;

to face the native population squarely with the facts that progress is inseparable from good order and industrious habits and that social services have to be paid for;

to prepare the way for ultimately fitting the native people, in a way they can understand, into the Territory's political system.

'It is obvious from the first and fourth of these clauses that the policy is recognised as having definite political development implications. Nevertheless, it should be clearly understood by all officers that it is a matter of policy not to unduly emphasise area political development - which is cheap, and can be made spectacular - at the expense of the Councils' most pressing functions. These, briefly, are to serve as media for raising native living standards. Increasing indigenous political awareness is both inevitable and desirable, but ideally it should be based on solid foundations of economic and social advancement. Councils constituted under the Ordinance have wide conditional powers granted to them in both these spheres. It is the Administration's responsibility to ensure that these potentialities

are developed.¹

In 1956 Fenbury had included a detailed discussion of the relation between local government policy and Australian interests in a report to his Director after a fact-finding tour of several New Guinea districts as a Chief of Division with the Department of Native Affairs. He pointed out that none of the points raised was new, but he wanted to invite comment from senior officers because 'the need to formulate specific policies for specific areas is becoming increasingly urgent':

'The fundamental question requiring clarification is that of the direction in which we desire the native population of the Territory to evolve.

'Do we really envisage the natives of this Territory, irrespective of the degree of education they may ultimately acquire, ever being able to stand completely by themselves in the modern world?

'The generally scanty and primitive population, the difficult terrain, the relatively small proportion of truly arable land, the limited natural resources - all argue against such a thesis.

'On political probabilities it seems that the Territory will always be dependent for its military security on one of its larger neighbours. Australia is in political control now, and the unalterable facts of geography, coupled with the limiting factors mentioned above, mean that, in our own strategic interests, we cannot envisage a time when we can afford to shrug and turn away from this country. We dare not.

'Are we not then, in fact, committed here indefinitely, unless we are either forced out by superior foreign arms or by internal pressures sponsored by outside influences? Control over the first contingency is largely not in our hands. Control over the factors making for the second - and historically more probable development - does to some extent rest with us.

¹ Circular Memorandum No. 5/59, 'Native Local Government', 22 June 1959, paras. 1-5. For Circular Instruction 141 in full, see Appendix II.

'If this is accepted, the broad administrative problem, to which all other considerations are subordinate, is that of giving the native population of this country a continuing vested interest in living amicably with us. To expect esteem or gratitude is idle. The appeal must be to enlightened self-interest. If we cannot hope to be regarded gratefully, we can at least aspire to manage affairs so that our continuing presence is regarded by the advancing native as essential to his continuing well-being. Australia's stake in Papua and New Guinea is something more than temporary overlordship of a string of tropical islands.

'In my view the formulation and implementing of every policy measure should be constantly and dispassionately appraised from this viewpoint of the necessity for amicable co-existence. It is also vital to remember that we are dealing with people whose outlook and values vary markedly from our own, and who are very apt to "nativise" imported concepts so that the final result is very different from that intended. The yardstick by which policy effects are gauged must not be one evolved for the metropolitan country. Governing primitive dependencies is a trickier art than governing at home.

'In terms of practical administration techniques our success in maintaining ultimate political control over the Territory appears to me to be largely dependent on the degree to which we can adhere to the following working principles:

- (a) Specific area policies are required. They should be based on inter-departmental decisions regarding the differential treatment required for areas with potentials for native economic development, and for areas lacking them;
- (b) An integral part of area policy to be, in those tribal areas with economic potentials, the systematic fostering of agricultural production on a non-tribal land tenure pattern;
- (c) In the educational field, maximum emphasis on agricultural and technical training, and avoidance of the clerical bias making for a white-collar mentality;

... ..

- (f) Making the fullest use possible of local area machinery as an administrative vehicle for economic, social and political development, and as a device for sublimating the energies of native leadership into local channels directed to raising living standards, and for applying economic pressure;
- (g) Within the Administration, provision of equal opportunity for equal skills (via a Local Civil Service) irrespective of skin colour;
- (h) Keeping legislation and Administrative procedure geared to the actualities of existing situations, the criteria being always the probable effect on the basic policy objective;
- (i) Indoctrination of officials with the necessity for a frank and (other things being equal) friendly approach in their dealings with the native population, especially the advancing elements. The native, from our viewpoint, may be profoundly ignorant, but it is a fatal error to regard him as a child;
- (j) As a corollary to (i), the weeding out from those Departments executively concerned with natives of officers whose temperaments disqualify them as mentors to an evolving society' (Fenbury to Director of Native Affairs, 'Notes on Native Policy', 17 April 1956, paras. 7-14).

In the course of a long personal letter to the Minister in 1957 from his post in New York (the precise date is missing), Fenbury added a further point to this reasoning: 'There is no doubt in my mind that we have got to use area councils, to the fullest extent, as administrative instruments, as the essential linkage between central government and native population. Of the risks involved, the gravest will derive from a defensive Government attitude, making for grudging concessions in response to popular clamour. The more we maintain the initiative in channelling native aspirations into economic and social activities, the less scope we give the demagogues of the future to exploit native grievances.'

An earlier document, written in Canberra, provides a useful link with the next section where it sums up Fenbury's reasons for thinking that 'the local government system, in so far as conditions of terrain and population distribution render its introduction feasible, is our best medium for fulfilling basic policy aims':

- '(a) It provides for continuous linkage between the Administration and native villages grouped into population units of sufficient size to be administratively workable and financially potent;
- '(b) It provides area machinery capable of continuous improvement and refinement, as the native society evolves, without radical reforms or painful demolitions;
- '(c) It facilitates enlisting the support and active participation of the local community leaders - however the fulcrum of leadership may shift at different stages in the evolutionary process - and minimises the risk of them (and the Administration) becoming gradually divorced from popular opinion and sentiment;
- '(d) It facilitates the maintenance of law and order;
- '(e) Properly handled, it enables Administration officers continuously to educate the community's chosen leaders into appreciation of the evolutionary forces operating on native society, and of the measures and adjustments required to cope with them;
- '(f) It facilitates the application, through the community's own elected leaders, of the calculated blend of persuasion and legal pressure which will always be needed to steer certain elements of native society towards the desired ends' (Fenbury, memorandum written at Department of Territories, Canberra, 'Role of the Native Local Government System in Administration Policy', November 1954, para. 26).

'A slow ferment in native society'

Within the above broad framework, Fenbury's ideas about local government functions gained urgency from a close analysis of the course of social evolution in the areas of longest European contact, and its potentially destructive effects on native well-being and morale. For example:

'... the whole civilizing process inevitably produces undesirable trends. In those areas long under Administration control the impact of the "culture-contact" situation has weakened tribal discipline and the indigenous institutions making for social cohesion. Many of the traditional values - prowess in war or sorcery or food production as a qualification for leadership etc. - have been upset, and really satisfactory substitutes have yet to be found. It is a truism that the standards of basic morality of a primitive tribal society - habits of industry, respect for family authority, care of the aged, honesty, marital stability, codes of sex behaviour - do not automatically rise proportionately to the period spent under European tutelage. They tend to lower, and at an increasing rate.

'Internal tribal economics and social values are inevitably upset by the advent of the white man's currency and goods, and the white man's religions. Drastic changes in ritual life, including those closely associated with periodic community activities, are brought about by Mission and Government pressures. The elders' authority - on which Melanesian social stability is based - is thus undermined and declines as a force regulating group and individual behaviour.

'In the remoter areas, control of the new wealth shifts largely to the hands of the young men who have been out of work and return home with boxes of trade goods, heads stuffed with inaccurate interpretations of their experiences, and without their manners. Every Melanesian community in this stage exhibits a parasitic class of idle youths - not necessarily returned labourers, many of whom acquire some idea of steady labour during employment. Ignorance of western economics and western technology remains profound, but what is lacking in knowledge is made up for in envious speculation and magico-religious rationalisations.

'If left to struggle through this confused primary phase of culture-contact without constant positive direction or

economic scope, a native society usually exhibits some marked symptoms of social and psychological malaise: progressive indolence and apathy, interlarded with outbreaks of cargo-cult and the sporadic emergence of self-styled Messiahs.

'The fostering of native economic production as a technique for re-directing native energies and ambitions into channels leading to improved living standards - on which all sound social and political progress depends - is rightly regarded as the best prophylactic against culture-contact stagnation. It is, I think, axiomatic that a second-phase native policy without a clearly defined economic content is basically unsound. But at the same time, it must be appreciated that the introduction of cash-cropping itself gives rise to a series of peculiarly "native" problems over and above the transport and marketing difficulties normally associated with primary production in backward areas.

'The ultimate effect of superimposing cash cropping on a shifting cultivation subsistence gardening economy, without any concomitant modifications of the traditional land tenure system, is to upset the ratio which was maintained, however brutally, between the people and the land in pre-European times. The development of native economic production greatly accelerates the rate of social change.

'The traditional native concepts of land ownership and land usage, evolved over the centuries to enable primitive groups to subsist in a primitive way, can become inadequate to the new demands within the space of a generation. As more and more of the area of a particular village community is devoted to economic crops, especially those of a permanent character, the amount of land available for subsistence gardening naturally decreases. Increases in population, the establishment of public facilities such as schools, and the introduction of livestock accentuate the shortage, as do past heavy alienations of land.

'The continuance of bush fallowing agriculture for subsistence gardening (no practical alternative method, except perhaps large scale composting, appropriate to the needs of native-cultivated tropical soils, has been yet evolved anywhere) on a progressively decreasing fallow cycle results in soil degradation. Once commenced, the process can accelerate at frightening speed.

'The rate at which these effects begin to show depends firstly, on the land reserves held by the particular community concerned, and secondly, on the zeal with which economic production is adopted. The sparseness of the Papua and New Guinea native population in relation to the Territory's total area, with the relatively small area alienated, would indicate that there is ample time to study the crude problems, before any undesirable effects become acute. It is significant, however, that the process described above has already advanced sufficiently on parts of the Gazelle Peninsula - and, I understand, on parts of New Ireland - to constitute a pressing problem now.

'Yet another aspect is the gradual but inevitable assertion of individual land rights, particularly to areas under permanent economic crops. This has the effect of further invalidating the traditional systems of land tenure and inheritance, and there is progressive fragmentation of holdings.

'With the rise of local native entrepreneurs and money lenders, land becomes a commodity readily equatable to cash. The stage is thus set for the ultimate emergence of the familiar landlord-tenant situation, complicated by problems of rural indebtedness, and finally, the appearance of a poverty stricken proletariat.

'Judging by other Territories' experiences, the pattern most liable to emerge from all these seethings of the acculturation process, if too little has been done too late, is that of a suspicious and turbulent agglomeration of poor village communities, leavened with semi-literate clerks and irresponsible hoodlums, and sullenly antagonistic to Europeans. A situation of this sort provides fertile ground for the propaganda of a politically-conscious native elite which, for any of a variety of reasons, has recoiled embittered from its involvement with European society' (Fenbury memorandum, 'Role of the Native Local Government System in Administration Policy', November 1954, paras. 8-19).

A memorandum of the previous year gives more detail on the breakdown of traditional land tenure: 'The general trend is towards western practices, and individualism in title, but the whole process is confused by the retention of various pre-European concepts relating to clan, family and community rights, usufructory rights and the like. In the Tolai area of the Gazelle Peninsula, the whole native land tenure system is very much in the melting pot. Land is being bought

outright, and rented, every day. The matrilineal descent of land is being constantly opposed and upset by natives who desire their own immediate descendants to inherit coconut and cocoa groves that they have planted up. Strictly speaking, all these transactions are illegal - unless we concede that "native customary usage" is whatever usage happens to be prevailing at the present time, and in a particular group' (Fenbury to Director of Lands, 'Amendments required to the Lands Ordinance', 17 August 1953, para. 7).

The final step in the argument was to note the effects of these developments on the structure of authority in the villages. The report of Fenbury's 1956 tour gives specific illustrations of this point:

'A slow ferment is discernible in native society in most of the areas visited. It is a natural result of two generations of culture contact, with all the weakening of pre-European tribal authority and changes in values that the culture-contact process connotes. An urge for material advancement is present, but it is not, for most of the people, a wholly rational urge. Ingredients of "cargo-cult" economics are clearly discernible in the thinking of the average villager, who, whilst hovering on the fringe between subsistence gardening and a cash economy, is preoccupied with finding accelerated ways of bridging the obvious gap between his living standards and those of non-natives. Meantime, a rising class of more astute and realistic native entrepreneurs is slowly but surely wresting leadership from the traditional elders and achieving a grip on the native economy - and an influence on the young men - that will make our administrative task immeasurably more difficult.

'By this I do not mean that individual initiative and enterprise should be discouraged. The point being made is that these entrepreneurs are filling a vacuum, and in many instances they are exploiting the situation - and native credulity - with a cynical disregard for anyone's welfare but their own. The fact that these men are themselves for the most part ignorant and confused makes the situation even more dangerous.

'This tendency for local affairs to become dominated by local entrepreneurs seemed to be most marked on Buka Island, but there are signs of it also in both the Madang and Sepik districts. In the Tolai section of the Gazelle Peninsula the existence of reasonably effective administrative

machinery with an economic bias has largely resulted in the entrepreneurs confining their activities to the immediate field of production. As things stand there, the economic pre-eminence of cultivators such as Napitalai, Elison, ToDugan and ToWuna is due primarily to their superior energy and ability, which is wholly desirable. On the other hand, the most notorious of the Tolai entrepreneurs, Mano of Nawuneram, whilst displaying commendable energy, has bolstered his position by political activity which is essentially anti-Administration in character and against both the long-term economic and social interests of the people he dominates.

'At least in the areas under reference, the village officials can no longer be regarded as constituting an appropriate medium for any enhanced tempo of native administration. I was impressed by the frequency with which comments in this strain were made at public meetings by the village officials themselves. At HANAHAN and LEMANANU [sic] on BUKA, at two separate meetings in DAGUA area (Sepik), and again at AMELE and HILU in MADANG, the same complaints were made: - The village officials no longer count for much in village affairs; the young men do not heed the luluais' talk; the officials themselves are tired of being honorary whipping boys - of being responsible to an Administration which supports their authority when its representatives are present, but is unable to assist them during the intervals between visits.

'The development of this situation was perhaps most marked on BUKA. At HANAHAN, after a preliminary outline talk, the officials present, including the Paramount Luluai, strongly favoured a change-over to local government administration. An hour later, at a general meeting, the idea was opposed by a local "business-man" and two of his young henchmen (the old "insufficient money" line was delivered); the officials made a very poor showing. The following day, at LEMAMANU [sic], a much larger gathering generally endorsed the idea - but again it was noticeable that the only intelligent comment (and some keen questions) came from the younger "middle-class" group. It seems clear that on Buka wealth, prestige and leadership are slipping from the elders, and the same trend is observable elsewhere - even I am informed in Chimbu.

'Developments of this sort are evolutionary, and hence inevitable. But they indicate very clearly the need to bring our native administrative system into gear with the actualities.

On these grounds alone it seems essential that we re-define village leadership by building up administrative combinations on an area basis. I am not suggesting that area administration through local government machinery is a panacea, but I do say, on the basis of experience, that it is the only method of work by which we can hope to achieve our administrative aims' (Fenbury to Director of Native Affairs, 'Notes on Native Policy', 17 April 1956, paras. 17-22).

Native modes of production, land tenure, and economic development

In Fenbury's view, coping with these economic, social and political effects of evolutionary change called, among other things, for careful study of the prerequisites for systematic native economic production. They included, for these agriculturists, the orderly development of tribal land in areas of relatively dense population by the people who owned it. As he wrote in his 1956 'Notes on Native Policy':

'The problems can perhaps be illustrated by the following propositions. (The premise on which they are based is that the natives are, by and large, agriculturists; that their future depends on wage labour or agriculture, and that we must be able to offer a choice; hence that a policy of agricultural development must be worked out for every controlled area. Where this is not possible in terms of local area conditions, the alternatives must be studied.)

'The propositions are:

- (a) Tribal economies must be based as far as possible on tree crops;
- (b) The ideal of the sturdy peasant farmer, cultivating his piece of tribal land and growing sufficient cash crops, in addition to his subsistence food, to meet his needs for social services and imported goods, is in fact a myth; it has not been realized anywhere in the world;
- (c) Cash cropping, particularly the growing of tree crops, triggers a series of evolutionary changes in customary land tenure systems, land usage, and land attitudes that within

the space of a generation promote fragmentation of holdings, bad farming and rural poverty. In fact, a tribal system of land tenure is incompatible with permanent tree-crop production;

- (d) Native prosperity, and hence native political stability, is ultimately dependent on two factors:
 - (i) the amount of per capita production; and
 - (ii) the quality of the product;
- (e) To resolve these factors satisfactorily, we must avoid the classical British error of limiting our responsibility in regard to native economic production to demonstration work and the provision of assistance with communications and markets, leaving land tenure and land usage to the general evolution of the culture-contact situation;
- (f) Achieving and maintaining an adequate level of per capita native production necessitates organising economic production on a land tenure basis which ensures the retention by growers of minimum economic areas, i.e., a system quite divorced from tribal usage and tribal land devolution;
- (g) Achieving and maintaining satisfactory standards of native production of tree crops implies plantation type production, with centralised processing. The two (theoretically) alternate [sic] lines for achieving this are communal farming (gang labour with sharing of proceeds) or group farming (individual family blocks laid out, as far as possible, to form contiguous areas). In terms of native psychology, including the growth in individualism which accompanies cash cropping, communal farming of tree crops seems to me to be basically unsound. (This despite the fact that natives themselves will plump for it in the early stages of cash cropping, and that it features largely in the activities of many of the existing copra marketing co-operatives.)

(h) It therefore seems that in tribal areas where tree crops are to be fostered the procedure should be along the following lines:

(i) Plantation areas deemed suitable by D.A.S.F. for the projected crop to be selected, and the native owners of these areas persuaded to surrender their customary rights;

(ii) These areas to be then vested in a perpetual local authority (local government type unit) which administers them subject to ultimate Government control. (In fact, for many years, the work will of necessity be done by Administration officers.)

(iii) Areas to be then carved up into areas of economic size and passed back to local natives as leaseholds, with cultivation conditions, etc., attached as was done with the Vudal Scheme.' (Fenbury to Director of Native Affairs, 'Notes on Native Policy', 17 April 1956, paras 25-6. The Vudal Scheme is described later in this chapter).

Fenbury believed that the vesting of local government councils with a direct role in the process of land tenure conversion could, among other things, help to overcome the obstacles to development presented by native attitudes and habits which, in a 1956 paper, he described in the following way:

'Individual Farming. The concept of wholly individual tenures is not compatible with existing native work attitudes and the reciprocity involved in village life. A keen awareness prevails of the ancient adage that many hands make light work. There is an almost mystic belief, apparently derived in part from misinterpreted observations of the operations of European commercial concerns, that "company work" - a Melanesian pidgin phrase denoting group effort with sharing of proceeds - somehow yields advantages disproportionately greater than the total efforts of the partaking individuals. Repeated experiences to the contrary, culminating in bitter litigation, never seem to shake this belief. With this, there is little realisation that in a final analysis

the economic advancement of a community is largely dependent upon the amount of per capita production. Communal coconut groves, and communal rice growing afford good examples of irrational native thinking in this regard. (At AMELE, near Madang, a crude analysis made during my last visit there indicated that, for all the enthusiasm, the amount of rice being produced per cultivator - including women and children - was contemptibly small.) By and large, wefts of "cargo cult" attitudes are still clearly discernible in native economic thinking, including that of the relatively advanced Tolais.

'Spot analyses of how the average Tolai villager spends his time have yielded some disconcerting results. Apart from morning and evening daily services, at least one day per week, apart from Sunday, is devoted to "church work", which additionally accounts for another 2-3 days per month for special religious occasions. One day per week is allegedly devoted to communal public works such as village cleaning and road maintenance. Attendance at funeral feasts, wedding feasts, post-natal celebrations, visits to relatives and the like, as well as the preparation for these occasions - and the ensuing recuperative period - average out at one day per week. Then there is subsistence gardening (less time consuming with the largely banana-eating Tolais than with other groups), house repairing, going to market on Saturdays, etc. Our crude assessment was that the average adult Tolai "economic unit" did not devote more than 9 days per month to economic production throughout the year.

... ..

'The average native agriculturist is still a long way from clearly appreciating that enhanced living standards involve regularity of performance in economic production - involve more work. By and large, cash is still regarded as a useful commodity rather than an essential means of exchange. Even amongst the Tolai it is still rivalled by shell currency. The average native is not under economic pressure as we recognise the term, and the building of that pressure is an essential ingredient in any schemes for systematic economic development. It is obvious that the prevailing quirks (from a European viewpoint) in native economic and social attitudes constitute formidable obstacles to a smooth and rapid transition to completely individual farming.'²

²Paras. 37-8, 42 of a paper dated 20 August 1956, sent by Fenbury from New York when asked to comment on an address on 'Native Economic Development in Papua and New Guinea'

Under the existing law, native land could be alienated only to the Administration, which could then use it for its own purposes or lease it to private individuals and public bodies under prescribed conditions. Fenbury's specific proposal was to give councils similar legal powers, subject to appropriate safeguards. He had raised the question at least as early as 1953, under two broad heads, the acquisition of land for council purposes and the regulation of native land usage:

'The number of permanent installations erected by native village councils is steadily growing: council houses, schools, aid-posts, teachers' and native medical assistants' houses, water-wells, re-afforestation blocks and the like. All these installations (excepting one or two on native reserves) are on land which, legally, is owned by particular natives or groups. Short of alienation, there is no means at present by which Councils can acquire valid title.

'In all cases there has been prior native consent to the use of this land by councils. In most cases the land was allegedly already community-owned and was ceded to the Council concerned as a gift. In some cases the land has been made available - or has been promised - on the understanding that the Council will buy it. Under the existing legislation any such payments would, of course, be illegal and would not give valid title. Land ceded as a gift is also, technically, an illegal transaction.

'It is difficult to see how this difficulty can be resolved by invoking the existing "alienation-thence-leasehold" procedure. It would be impossible to convince natives that if they wanted to make land available to their local council, their only avenue was to sell it to the Government. In areas such as the Tolai portion of the Gazelle Peninsula, where native land is in short supply, natives who are willing to sell or give parcels of land to their own council, for local public use, would refuse point-blank to sell it to the Administration.

2 (continued)

by C.R. Lambert (Secretary of the Department of Territories) to the July 1956 Senior Officers' Course at the Australian School of Pacific Administration, Sydney. Fenbury's commentary ran to forty-one pages, plus two Appendices, on 'Land Tenure in Relation to Native Economic Development'.

'What is required is a provision in the Lands Ordinance enabling native local government bodies, subject to Administration approval (such approval is in any case inherent in the Administration control of Council finances) to purchase directly from the native owners, land required for permanent installations of an essentially public-utility character (e.g. Council houses, schools, aid-posts etc.). It would be necessary for all such parcels of land to be surveyed and registered in the normal way, with perhaps, a special form of title issued by the Lands Dept.

... ..

'The second matter affecting native local government bodies on which it is suggested provision should be made in any new Land legislation is the degree to which Councils should be specifically empowered to exercise authority over land usage within their respective areas. They have, in fact, power to do so now through Council Rules (vide NVCO Sec.12(I)), but it would be difficult - or impossible - to frame rules on many aspects of land usage without conflicting with the existing Lands Ordinance.

'Measures designed to control land degradation, to reserve certain areas for re-forestation, to combat excessive fragmentation of holdings, to encourage native holders of large unused areas to make land available for cultivation by others - all Rules along these lines would imply some sort of "superior" proprietorship by the body making them. Their legal validity (quite apart from the statutory approval of all Council Rules reserved to District Commissioners) would seem to be dependent on specific recognition of this "superior proprietorship" of Councils in the Lands Ordinance.

'Re-forestation needs afford a fair example of the sort of provision that is required. The Forestry and Agriculture Depts. may consider that a certain area of native-owned land should be put under forest. It may be impossible or undesirable for the Dept. itself to acquire the land. The local native council might easily be persuaded to pass a rule forbidding cultivation on this area, but this falls far short of what is required, which is authority for the Council, acting under the guidance of Administration technical officers, to declare the land a forest reserve for a given number of years, to finance the re-forestation, and to specify the rights of the present owners and/or their descendants. All this obviously involves a diminution of

the customary rights of the native owners' (Fenbury to Director of Lands, 'Amendments required to the Lands Ordinance', 17 August 1953, paras. 2-5, 10-12).

Three years later Fenbury noted that a clause had been inserted in the draft of a new Lands Ordinance, partly on his initiative, that would enable local government authorities, subject to Administration approval, to acquire land direct from native owners for specified purposes. However, official resistance to the idea was such that the provision was no nearer to enactment than in 1953. The question was still unresolved in 1958, when the District Commissioners' Conference registered agreement with Fenbury's arguments by recognising 'that in certain areas of the Territory natives may be unwilling to sell selected areas of tribal land to the Administration thereby preventing the application of an Ambenob-type scheme based on prior alienation' and recommended, with two dissentients, that 'provision should be made in Territory Land Legislation for local authorities, under prescribed circumstances and conditions, to acquire selected areas of tribal land direct from the native owners' (Proceedings of District Commissioners' Conference, 1958).

But official policy remained unchanged - partly, it appears, from a persistent fear that councils 'would not remain under Administration control'. As late as 1973 Fenbury had to record that 'The progress achieved in tenure conversion in Niugini since 1945 is relatively insignificant', and that 'There does not seem to have been any attempt to implement the District Commissioners' recommendations' (Fenbury, 1974:60).

'Area administration' and political development

The modernisation and regulation of land use was one of a number of related issues contributing to Fenbury's insistence from the outset that local government councils - despite the title of the 'Village Councils' ordinance - must be based on larger units than the 'village' (or such small groups of villages as were implied in the idea of a separate council for the Raluanas). The argument for this policy most commonly attributed to him (and noted elsewhere in this book) was the need for local government units to be 'financially viable'. But he was also influenced by administrative and political considerations, and more generally by his concept of local government as a primary agent of ordered economic and social change. 'The basic point', he wrote, 'is that progressive

administration is just not possible when each of the populations of hundreds of tiny villages must be "got at" individually. There is not the staff to do it. Neither has the average village the resources of man-power, cash or skill to enable it to make any worth-while effort towards its own peoples' material advancement, even if the urge for material advancement was more widespread, and more rational, than is actually the case' (Fenbury to Director of Native Affairs, 'Notes on Native Policy', 17 April 1956, para. 16).

The following passage shows most clearly the close association in Fenbury's thinking between changing patterns of land usage, the need to accustom villagers to wider social and political horizons, the demands of economic development, and the size of the local government unit:

'... The term "tribal land" is commonly used administratively as a matter of convenience when referring to the whole of the area occupied by a particular lingual group, but in the Territory it has little practical significance. Within a lingual boundary, sovereignty over the land is claimed by the inhabitants of the various constituent villages. These traditionally disputed the "ownership" of marginal areas lying between villages with each other at least as much as they disputed boundaries with adjacent "foreign" lingual groups ...

... ..

'It will be appreciated that, considered alone, this fragmented pattern of land "sovereignty" greatly complicates the task of obtaining general native agreement to the acquisition by Government, or any statutory body, of the residual rights to the whole - or even to contiguous portions - of a "tribal" area. But the background to this situation, the prevailing pattern of political fragmentation, of village separatism, from which the attitudes to land result, can stultify all area planning unless plans are based on the initial establishment of area organisations making for the emergence of a broader group consciousness. Even then the task will not be easy.

'Practical experience has convinced me that a prerequisite to systematic native economic development including the reorganisation of land tenure, is the replacement of the separate village system of administration with a statutory body composed of village leaders, subject to Administration guidance and control, and by virtue of its day-to-day activities making for the break-down of village barriers and the development of

an awareness that living standards cannot be raised very far without sound economic production.

'I cannot too strongly reiterate the view that a policy of individualising land holdings must employ area administration as a first essential tool. The immediate competence of the organisation, as a body of village leaders, would be low, but this is not a vital factor. Much of its value would be in its being a locally acceptable, statutory body channelling Administration policy to the people of the area. This has been proved by the work done to date. What is important is that one of the avowed purposes for a unit's establishment must be the fostering of native economic development. Once organised as a going concern it must be used by the Administration to foster the idea - both by precept and practical implementation - that individual holdings for cash crops, without regard to traditional patterns of family, clan and hamlet rights, is the only sound line for economic development. If this can be achieved in the promotion of new crops, the way is opened for ultimate complete individualisation of holdings, and for best use to be made of the local land and resources.

'My assessment is that working through area machinery constitutes our most feasible means of applying the pressure, persuasion and credit facilities, entailed in the policy, along lines that are administratively sound, likely to be acceptable to the majority of the community, and in keeping with Australia's long-term interests' (Fenbury comments on C.R. Lambert's address on 'Native Economic Development' of July 1956, 20 August 1956, paras. 16, 19-22).

At the same time, Fenbury evidently felt it necessary periodically to reassure his colleagues and superiors that they were not creating 'a potential Frankenstein's monster' that might get out of hand, politically. This is part of the background to his repeated emphasis on the subordinate position of councils as administrative agencies of the central government:

'For reasons not clear to me, the term "native local government" seems to carry with it some connotation of accentuated political advancement, of mayors and aldermen, even of local native autonomy, and the general attitude to it by many members of all Departments concerned with native development and welfare would appear to be that of leaving it alone until economic and social policies have come to fruition.

'The facts are that the establishment of native local government units means grouping the native population into units of workable size, so that the problems involved in economic and social development can be brought into focus, area by area, and approached systematically. It does not mean any diminution of Administration control. It is initially, and must be for years, much more direct administration than what working on single villages, through village officials, amounts to in practice. I would prefer to use the term "area administration" rather than "local government". But whatever it is called, I am convinced that until we adopt it as a routine technique, applied as widely as the limiting factors of terrain and population densities permit, we will continue to lack an effective foundation on which to build. This applies to the efforts of the Agricultural, Education and Health Departments as much as to Native Affairs' (Fenbury to Director of Native Affairs, 'Notes on Native Policy', 17 April 1956, paras. 23-4).

On the relation of local government to indigenous political development Fenbury's views were essentially pragmatic. In 1953, when Hasluck wrote a minute which seemed 'to regard the local government system primarily in terms of native political advancement', Fenbury reminded him that existing policy (which in fact prevailed in the Territory, at least on paper, to the end of the 1950s) 'placed maximum emphasis on the function of councils as financially self-supporting media for raising native living standards'. This policy was based not only on the analysis of practical needs already outlined, but on Fenbury's belief that 'faulty timing, particularly in regard to the devolution of political responsibility, ... the most frequent immediate cause of colonial unrest ..., becomes inevitable, if the native population's political advancement is allowed to outstrip its economic and social development' (see Appendix III, paras. 3-9).

Thus the question for Fenbury was one of timing, not of opposing political advancement or imagining it could be deferred indefinitely. His attitude was clearly embodied in Circular Memorandum 5/59 already quoted: 'Increasing indigenous political awareness is both inevitable and desirable'. In 1957 he warned that 'evolving political awareness' would call for the development of larger political groupings under councils - but not so large as to become 'divorced ... from the people' - and added his usual caution about timing:

It is essential to develop these larger political organisations in time for them to serve as satisfying outlets for growing political consciousness. If their development lags too much, uncontrolled political movements will probably arise outside the local government system. But if we move too fast in building up political superstructures, enhanced political consciousness could become a dangerous forced growth (Notes dated 5 November 1957 on Lambert's address on 'Native Local Government', para. 7(c)).

In that same document Fenbury advocated - some five years ahead of the 'Foot' UN Visiting Mission - the immediate adoption of 'a common inter-racial franchise for direct elections to the Legislative Council' (para. 10). Earlier in 1957 he had sent Hasluck a copy of an unpublished article ('Reflections on the Territory Elections') arguing the idea in more detail, and he reminded Hasluck of it again in 1960 (Fenbury to Hasluck, personal letter, 13 July 1960). He held in 1957 that it was urgently necessary to link indigenous local political institutions with the Territorial political structure, but that this should not take the form of indirect communal representation - e.g. electoral colleges of councillors choosing M.L.C.s from amongst their own number (the device actually adopted in 1960 as an intermediate step). African experience showed that such arrangements emphasised 'the current dominance and separateness of the immigrant minority' and became 'a primary target for indigenous nationalism's discontents'. Direct elections on a common roll could anticipate impending indigenous nationalism in Niugini. If indigenous candidacy for the Legislative Council were restricted to serving members of local government councils, it would provide the necessary central-local linkage, secure indigenous politicians with at least a minimum apprenticeship in administrative responsibility, and act as a brake on the manipulations of demagogues.

To Fenbury the Minister's approach to local government in politics was sometimes puzzling, sometimes alarming, sometimes both. In 1961, for example, Hasluck was able to reiterate his concept of councils as 'a school of political advancement', while simultaneously (under the influence of the Derham report, as Fenbury noted) insisting that they must concern themselves only with 'local matters', must not exercise judicial powers or become land authorities or conduct schools (functions never sought either by or for

them), maintain order or prevent offences (Hasluck, 1976:399-400). When he asked his officers to 'try to make certain that the conference of Local Government Councils "minds its own business" and bears its own responsibilities and does not try to do the business that belongs to someone else', Fenbury felt bound to point out officially the difficulty of interpreting the instruction consistently, the impossibility of enforcing it, and the certainty that any attempt to do so would 'provoke resentment and destroy confidence' (Fenbury: Memorandum to Assistant Administrator (Services), 8 December 1961).

Fenbury's basic approach to political development at the time is perhaps most succinctly set out in his notes for a seminar given in the Australian National University earlier in 1961. He had no great hopes that any Australian policy, including his own approach, could avoid the customary traumas of decolonisation, considering the many surviving forms of racial discrimination and tension in Niugini, and 'the speed with which economic and social discontents can act as catalysts in political evolution'. With these caveats he wrote:

'Bearing in mind that TPNG will almost certainly remain, at least for many years to come, mainly a primary producing country, it seems to me that a satisfactory Australian/Territory political relationship depends most potently on our ability to build up as wide a spread as possible of politically aware and reasonably prosperous native small holders. One aspect of this theory is that, in the mass, these are the people who naturally tend to be cautiously realistic in their political attitudes, if only because they have more to lose through political upheavals than the unskilled urban wage-earner or the depressed tenant farmer.

'... [C]ontemporary history indicates that we have a heavy responsibility to educate the New Guineans to a level of political awareness and skill that will provide them with some protection against the excesses of their own future politicians. In the circumstances of the Territory, I do not see how this can be done except by devising more effective techniques for the economic and political development of rural areas than have been evolved elsewhere. On the basis of the little we have done to date, the technique I favour is that of making optimum use of area council organisation as a fairly comprehensive instrumentality but particularly for fostering systematic economic development which, in the long run, potently influences political attitudes. I am not

suggesting that rural local government should be built up as a sort of opposition force to future indigenous central government, but I am suggesting that from the Australian viewpoint an indigenous central government of the future strongly influenced by prosperous rural constituents thoroughly familiar, through involvement in area council activities, with the mundane realities of public administration is more likely to be a comfortable neighbour than a central government dominated by urban politicians lacking this experience and relying for support on grandiose promises to credulous and impoverished villagers.'

The role of the Administration

If control was one inevitable aspect of the Administration's role in area administration as Fenbury saw it, equally important in his eyes was its responsibility for providing initiative and support in the early stages especially. He particularly stressed the need for a hard-headed, practical approach that would place on Administration field officers a heavy burden not only of planning and negotiation but also of sheer physical effort. As he said in a talk to field officers in 1959:

'The immediate administrative advantage that has been gained from establishing a council lies in the change-over from a single village to an area approach, with all that this implies in terms of wider groupings of local manpower and cash resources, of consultative machinery and of local participation in local policy making. But these potential assets can only be realized if, following the establishment of a Council, consistent attention is paid to the variegated problems involved in raising local living standards.

'In brief, having established your area organisation, you have to decide what you are going to do with it. It is axiomatic that the onus of educating both the native community's leaders, and through them the general public, into a realistic awareness that advancement means increased effort, rests on field officers of the Administration. ...

'From the Native Affairs viewpoint, area planning, in a Council context, means deciding, in conjunction with a Council and district technical department representatives, what needs to be done in that area to further the Administration's broad objectives, what, in terms of local finances, skills and supplies, is immediately feasible, what are the priority tasks,

and how they are to be carried out. Once these decisions have been made, the work of translating them into a year's programme of estimated expenditure, of balancing the budget, maintaining financial control and seeing that the jobs are done, becomes a prime responsibility of Native Affairs.

'As carried out in the Councils established to date, these responsibilities have mainly involved improving communications and organising the construction of various sorts of installations - Council houses, schools, aid-posts, quarters for Council employees and native teachers, tanks, wells and so forth, and finding the staff to man them. In the longer established Councils there has by now been a good deal of achievement in the execution of these routine tasks, and some attention has been devoted to broader aspects. In the newer units, most of the basic work has still to be done' (Fenbury, notes for a talk to the Local Government Training Course for field officers, 1959, paras. 2-5).

Fenbury had said the same things even more pointedly when himself working on the Gazelle in 1953: 'In practice, the local government system becomes very much a matter of getting things done. Granted that the estimates of each Council must be geared to the prevailing tempo of native life in the Council's area, to the Council's financial resources, and to the availability of the Administration staff required to supervise their implementation, it is imperative that there be, year by year, some material achievement of a durable sort' (Fenbury to Director of District Services and Native Affairs, 'Native Local Government', 24 October 1953, para. 48 (See Appendix III)).

Fenbury himself had a strong practical bent, and he and his colleagues in the early 1950s had full scope for their remarkable physical energies and varied skills, ranging from carpentry to book-keeping. The supervision of councils' works programmes (building schools, council houses, aid posts, cacao fermentaries, installing underground tanks, putting in roads and bridges, and so on) was only one aspect of the chores they involved for administration field staff working with councils. Amongst the others were the training of council clerks and other staff, financial supervision, stores supervision, arrangements for vehicle repairs and maintenance, and supplies organisation. Fenbury comments on the need for expatriate staff to spend time on these matters in a note to McCarthy (the D.C.) on the eve of his transfer from Rabaul to Port Moresby in March 1954:

'Supplies organisation. A constant chore that cannot be neglected. Our biggest headache is the race relations angle. Time after time we have had to supervise buying, not through lack of knowledge by the natives, but because on their own they either wouldn't get it, would be sold something else, or would be robbed. (We squeeze a discount out of B.P.'s and a few others now). Our dealings with N. Wood (Pacific Timbers) re bulk supplies have been very satisfactory. Williamson and Liddle have both had a fair bit of experience in this line. Suggest you organise it that Page picks up some wrinkles. We're running shoe-string budgets, so some intelligence is needed.

'Vehicle Repairs and Maintenance. Again a chore that, despite our best efforts, we have not been able to get onto an automatic arrangement basis. Race relations again, plus the fact that there's not a reputable garage in the bloody town.'

Supplies of building materials and other equipment were short in all parts of Niugini in the 1950s, and many Administration field staff must have shared Fenbury's critical view noted in an unpublished paper, 'Our Policy in New Guinea: Must it be Development or Welfare?', written on furlough in 1952, of 'the Administration's lamentable failure to acquire and retain in the Territory an adequate share of the vast quantities of materials and equipment left by the Allied forces'.

At a later stage Fenbury warned of the growing need for more sophisticated help with problems of management and finance, especially if councils generally became, as he hoped, the means of launching autonomous native economic enterprises on a substantial scale:

'Ultimate need for a managerial section. It is probable that a wide growth of council-sponsored and Administration-guided economic organisations will ultimately give rise to a need for these latter to become financially self-sufficient corporate bodies in their own right. It appears readily feasible for economic development to proceed along these lines whilst still maintaining linkage with the parent local government bodies, and this, in terms of native psychology, is most desirable. One implication of the relatively large scale commercial operations and increasing specialisation of supervisory activities that such a system entails is the need to develop, preferably from within the ranks of Field Officers,

a managerial section. These men, who would supplement, but not replace, the Field Officers charged with general supervision of the area administration, would need to serve a special apprenticeship designed to furnish them with the requisite background in native administration, agriculture, and financial accounting. If retained as officers of the Public Service, which from the overall Administration viewpoint would be definitely desirable, it is assumed that arrangements could be effected whereby their salaries were a charge on the organisation receiving their services. The general question of a managerial section within the Department of Native Affairs was raised in a memorandum to the Public Service Commissioner earlier this year' (Fenbury's comments on address by C.R. Lambert: paper on 'Land Tenure in Relation to Native Economic Development', 20 August 1956, para. 76).

There were a number of ways in which Fenbury believed that the central authorities could help local government to play the parts he envisaged for it, by specific changes in law or practice. But he had the greatest difficulty in even arousing their interest in his proposals.

One minor bugbear related to supplies for councils' works programmes. Customs duty was included in the price councils had to pay for building materials purchased either from commercial firms or on a cash sale basis from the Administration's Works and Housing Department. Early in 1953, noting the extent in money terms to which the Gazelle councils were contributing to the cost of local services, Fenbury pointed out:

'Administration thus gains doubly: not only are Councils providing installations for which the Administration would be otherwise liable, but they are paying substantial indirect taxation to the Administration for the privilege of doing so. ... Whilst the native population generally remains untaxed it would seem to be only fair for the Administration to waive Customs Duties on purchases by Councils - from Government Departments at any rate - of materials used on social services installations' (Fenbury memorandum 'Native Village Councils - New Britain. Expenditure on Public Services - 1952', 20 January 1953).

Fenbury asked that the matter be raised with the Government Secretary and Chief Collector of Customs. However, Colin Liddle, who joined the Native Authorities staff in 1952 and was associated with councils work for most of the

next twenty-three years, tells us that although this matter was periodically revived by councils, the first positive response came late in 1975 when the responsible minister of the independent Papua New Guinea government made a submission to his Cabinet for waiving customs duty on council purchases.

A second difficulty lay in persuading the central authorities that councils were credit-worthy institutions and the Administration should feel safe in assisting them with loans. Some of the objections can be deduced from a Fenbury memorandum of 1954 which is obviously intended to follow up a request for a loan for buildings in connection with the Tolai cocoa project:

'The Treasurer seems to overlook the fact that the finances of the Councils are, by law, controlled by the Administration in the person of the District Commissioner, who approves each annual financial programme. In fact, he, or the A.D.O. (N.A.) working under him, does the actual working out of each financial programme. The Councils are quite happy to be guided by his advice.

'There is therefore no need to worry about a borrowing Council's willingness to repay. The only point on which the Treasurer should need reassuring is a particular Council's ability to repay. If I were not 100% sure on this point I would not apply for the loans.

... ..

'It should be appreciated that the Councils cannot suddenly go bankrupt, nor, without some extraordinary upheaval, is it at all probable that their tax collections will suddenly cease. It should also be remembered that the finances are not only Government controlled - they are also Government supervised. The Annual financial statements, as well as the estimates, are all available for perusal if the Treasurer wishes to see them.

'My view, then, is that no greater security is required than -

- (a) A formal motion by the Council concerned, accepting the loan and the terms of repayment.
- (b) A Memorandum of Agreement signed by the Council and endorsed by the D.C.

'The loan monies will be required in lump sums. They are to be outlayed on buildings. The loans should be passed through to the D.C. who can have them paid into the relevant Councils' current A/cs' (Fenbury to Director of District Services and Native Affairs, 18 August 1954, paras. 1-2, 6-8).

An underlying obstacle to securing whole-hearted Administration support for council economic activities was the persistent opposition of expatriate interests to indigenous economic development in general, powerfully abetted by political pressures in Canberra - as Hasluck himself has reported (1976:118-27, 133, 214-18, 308-10). In particular, business ventures by quasi-governmental agencies including councils were represented throughout the pre-independence period as 'unfair competition with private enterprise', an argument given added emotional overtones on the Gazelle in the 1950s by agitation for Australian soldier settlement schemes.

The Fenbury papers contain few direct references to these pressures, but an example of their results was the closing in 1960 of the Administration sawmill at Keravat, which had been a boon to the Gazelle councils. Colin Liddle notes (personal communication) that 'the sawmill, costed on a strictly self-supporting basis, was able to sell timber 30 per cent cheaper than white-owned private enterprise mills thanks to its efficient labour organisation and high morale. Its closure was believed to be the outcome of representations by Rabaul businessmen to Australian politicians'. Fenbury, referring to the closure in his notes for a talk at the Australian National University shortly afterwards, wrote: 'I do not know of any single post-war act that has caused us more political harm in the Tolai area'.

From the mid-1960s, however, councils were officially encouraged to engage in business activities, partly to supplement inadequate tax revenues. By the 1970s their undertakings included repair garages and service stations, hire of vehicles, hostels, contract roadwork, equipment pools, sawmills, cattle, pig and poultry breeding, and various services on contract to the government. The main scene of these activities was the central Highlands.

'Area administration', in Fenbury's view, required that local government councils should be the focal point for the co-ordination of all departmental development activities in the districts and sub-districts:

'General Administrative and financial supervision of councils is by law vested in District Officers and their staffs, but area councils are designed to serve the administrative purposes of all departments. Properly handled, these units can fulfil a valuable role as junior partners of all Administration Departments, and as catalysts for the integration of native policy at local area level. The degree to which these policy aims can be effected depends primarily on the degree to which district departmental officers can cooperate in developing and implementing area programmes.

'A direct responsibility rests on all district technical officers to ensure that their departmental requirements are met as far as possible in the annual local government estimates which lay down each year's programme. Technical department officers should make themselves conversant with each local unit's major problems and general financial position. Thus informed, they must be prepared to make contributions in estimates discussions, and in developing as balanced a programme for the area as is possible in the light of local circumstances. It should be clearly understood that, subject to the observance of normal inter-departmental protocol procedures, and the use of common sense, any technical department officer is entitled to attend and to address any ordinary council meeting or, if the circumstances warrant it, to request a special meeting to be convened.

'The extremely limited financial resources of most units means that during the first few years maximum emphasis must be placed on Councils' roles as sponsors of economic development, which alone can lead to increased local incomes and hence to increased local ability to support enhanced social services. In specific terms, this means that in many instances council activities involving expenditure must be geared more in the first instance to the departmental activities of Agriculture and Native Affairs, than to those of the social services departments.

'Balanced area programmes are wholly desirable, but the degree to which junior partnership roles can be immediately developed in relation to different departments can only be evaluated in the light of local area circumstances. The general policy aim for councils gradually to assume increasing financial responsibility for certain aspects of local services. ... It should also be borne in mind that, as Councils acquire some executive skills, it may become desirable to make more

use of them than has been done to date in the performance of specific Administration-financed agency functions, e.g. airfields and road maintenance.

'Outside those functions involving finance, there is wide scope for developing the junior partnership in activities where the facilities provided by councils for consulting and educating public opinion, conducting anti-pest, etc. campaigns, compiling statistics, etc., can be of considerable value in the work of many departments.

... ..

'It will be appreciated that the need for each council to pass its own estimates by formal vote imposes an additional responsibility on Administration officers to patiently explain their departmental needs. At present no unit is capable of preparing its own annual financial programme unaided. This situation will change, but it is wholly undesirable, during these formative years, that any unit should be left to work out for itself, without Administration stimulus and assistance, the most appropriate lines of annual expenditure' (Circular Memorandum, 'Native Local Government', 22 June 1959 (drafted by Fenbury), paras. 8-12, 14).

In his extended 1956 paper on land tenure Fenbury set out in detail his reasons for thinking that 'a project-co-ordinating authority at Central Administration level is equally necessary'. It ran in part:

'... Both the number and the scope of developmental projects that can be successfully launched concurrently is dependent on the organising of necessary staff, funds and materials by the various Administration agencies involved. I think we have learnt that in practice, systematic economic development is apt to concern the departments of Public Health, Education, Lands and Forests as well as Agriculture and Native Affairs. During some years' experience of native local government work, which involved integrating inter-departmental activities at native area level, I became acutely aware of the extent to which we suffered from inadequate coordination of departmental policies at Headquarters level. In fact, the frustrating task of endeavouring to push basic policy issues up from the bottom consumed an inordinate amount of Field Officers' time, hampered the organisation of area activities, and tended to promote inconsistencies in emphasis.

'Indigenous mentality is such that in the sphere of native policy, the agricultural, medical, educational and "native affairs" aspects are inextricably linked, and attempts by Government to handle them as entirely separate issues result in distortions. This is one of the major factors necessitating a differentiation in government procedures for primitive areas from those applicable in metropolitan countries. Too often, it tends to be overlooked.

'Amongst other requirements, efficient area planning means ensuring that the different departments concerned are geared to play their respective roles as required, and that, in terms of staffing dispositions, they will be able to maintain continuity in performance. Achieving this necessitates Departmental Heads entering into firm commitments; it also implies some form of coordinating machinery to keep departmental policies adjusted to the needs of pre-determined priorities. Where departmental interests clash, or there are competing priorities, the issues must be unequivocally resolved at top levels.

'To be effective, the coordinating machinery must be more continuous than that afforded by periodic meetings of departmental heads, where spot decisions are apt to be made on inadequate data by busy men with many other duties. In my view, there must be a cadre of Headquarters officers responsible to the Assistant Administrator for the continuous collation of developmental data furnished by patrol reports and special teams, and for the planning of the broad strategy of the developmental pattern. Much of this basic work should naturally fall within the ambit of Native Affairs; the continued artificial separation of Native Affairs headquarters from Central Administration militates against the evolution of smooth working arrangements.

'District Development Advisory Committees and Field Officers. The establishment of District Development Advisory Committees carrying more clearly defined functions than comparable bodies in the Territory have exercised to date, is an obviously necessary measure. ...

'It must be remembered that, far from being local experts, very few of the departmental officers within a district at any given time - including District Officers - are even familiar with the topography of the whole of the district. Conditions of terrain, population distribution and the degree of culture-contact vary widely within every district, even in

different parts of a single sub-district. The priority areas for investigation of developmental potentials must be those where the above factors are relatively favourable. (The problems presented by those areas exhibiting small pockets of population scattered in tiny hamlets through broken and inaccessible country are beyond our immediate scope.) The present situation is that many areas with promising potentials (e.g. Buin, West Nakanai, the Aitape hinterland) have been almost wholly neglected by technical officers, partly because of inadequate staff, partly due to poor communications and lack of native policy leadership from Native Affairs.

'In my view it would be appropriate for Central Administration, from its collation of information - much of it already available in patrol reports etc. - to designate, if only tentatively, the areas to be examined in detail by roving technical teams, and subsequently to be reported on by District Development Advisory Committees. In other words, it is suggested that the initial impetus, and the provision of special land-use investigation teams, should be Central Administration responsibilities. It might be added that, in terms of staffing probabilities, technical teams would necessarily have to be inter-district task forces.

'In my experience of local government work, most technical officers have responded enthusiastically to requests for combined operations in the handling of specific area situations. As a general administrative agency, it should be a Native Affairs responsibility to supply the initial stimulus in regard to area schemes. Too often, unfortunately, positive leadership by Native Affairs in native policy matters has been lacking. In a profession where the broad view is essential, many district administrators seem to have been conditioned into an outlook as narrow as that of the most rabid specialist.

'One hopeful sign, however, is that, on a limited front, we have managed to advance some distance towards the technical department/field officer relationship advocated in the paper. It is apparently not widely known that on the Gazelle Peninsula, and to a lesser degree at Milne Bay and in the South Manus area, Native Affairs Field officers performing local government duties have regularly invoked team work, involving both technical officers and local native leaders, in the planning and execution of local area projects. During the past five years, annual programmes for council areas have been invariably prepared in consultation with

district departmental representatives. Results have been generally satisfactory.

'In this work it has been the supervising Field Officer's responsibility to determine priorities, having regard to immediate council wishes and also longer term area requirements; to calculate the financial implications, organise the necessary supplies and labour; to keep the programme adjusted to changes in the local area situation, and to integrate the interdepartmental aspects. Projects such as the Tolai Cacao scheme, the Vudal Land Settlement scheme, the Nanalaka Rural Education Centre, have all been planned and launched as combined operations' (Fenbury, 'Land Tenure in Relation to Native Economic Development', New York, 20 August 1956, paras. 58-67).

One passage in the notes on another address by C.R. Lambert gives examples of the cooperation achieved between local government councils and at least some Administration departments up to the end of 1957:

'Health. (i) Council Aid-post system. The councils build and equip medical aid-posts, supply candidates from their areas for training at Administration medical schools, and employ successful students. Wages are paid by the Councils, according to wage-rates laid down by P.H.D., and the aid-post orderlies (technically part time workers) are subject to P.H.D. supervision. They are usually supplied with houses by the Councils. Most councils, in consultation with district medical authorities, vote small annual "Medical" appropriations, but, except for odd items, aid-post drugs and dressings have been supplied free by the Health Department.

(ii) Hygiene and Sanitation. A similar type of arrangement has operated for hygiene orderlies, who actually function as hygiene and sanitary inspectors and instructors. ...

(iii) Infant Welfare, Anti-tuberculosis etc. Councils cooperate with the Department in facilitating arrangements for periodic visits etc. by Department personnel, including transportation assistance.

... ..

'Education. The principles of linkage between the Education Department and local government councils have been laid down by the Director of Education in a circular

instruction ... Subject to agreement with the Education Department, councils build and equip schools and incidentally native and teachers' houses, and contribute to the construction costs of central institutions. The employment, wages and control of all teachers at council-sponsored schools remains in the hands of the Education Department. Apart from the fact that the relatively high rates of remuneration of school teachers are beyond the strictly limited financial resources of the units established to-date, it seems highly desirable that, unlike other technical workers, their employment should remain a Central Government responsibility. ...

'Agriculture. The desired forms of linkage will, of course, vary according to the local economic development pattern. One basic arrangement, however, should be a continuous system making for the training of indigenous agricultural instructors in particular techniques (e.g. copra processing, cacao and coffee cultivation and pruning, contour planting etc.) and for their subsequent employment by councils, under D.A.S.F. [Department of Agriculture, Stock and Fisheries] supervision.

'Thus far, despite steady Native Affairs pressures, no such system has been evolved. One major obstacle has been the apparent inability of D.A.S.F. to establish an appropriate Agricultural training school ...

'Forestry. Similar general observations to those made in regard to agriculture apply to Forestry. The problem, however, is simpler, and of less urgency. We have already inspired councils to plant a few small reforestation blocks' (Fenbury 'Notes', 5 November 1957, on talk by C.R. Lambert to ASOPA Senior Officers' Course 'Native Local Government', paras. 20, 22, 24-5, 30).

Training for area administration

From the beginning Fenbury saw a need for systematic training, not only of councillors and their administrative and technical staff, but also of the officers supervising and co-operating with councils in their work and of the people taking part in the developmental schemes promoted through councils. As early as 1951 he established the Local Government Training Centre at Vunadadir. The following is his own account of its early years, based on notes for the 1968 graduation speech at Vunadadir Local Government Training Centre, and left among his drafts for this book:

'We started the first Tolai Councils at Reimber ... and at Vunamami in 1950. The first meeting of the first Tolai council established here was held under a tree at Vunakalkalulu, ... Before very long the need arose for a place where we could train bright young men as council clerks and cocoa fermentary clerks and where we could give newly elected councillors some idea of their duties. Rabaul at that time was a very dusty, dilapidated town of paper shanties, accommodation was scarce, and councils - and the people organising them - were regarded with dark suspicion by most of the white community. I wanted a place where councillors and council kiaps could meet in comfort and where we could talk quietly with local leaders and perhaps even do a little thinking. So I asked my old friend ToPoi, who was the paramount luluai of Reimber, before becoming first president of Reimber Council, to find a suitable site in a spot central to the whole Tolai area. He conferred with his old friend ToMare of Vunakambe (near Vunadadir) and various other big men of good standing in the Iniet Society and he brought me to Vunadadir, which means the place of the galip trees. I believe this area was used for special Iniet Society purposes in the old days.^[3] We once dug up a very fine carved stone dog [it is now in the Territory museum], and later a very evil looking little stone man - the story was that he had to be kept locked in a cupboard to prevent him from walking about at night.

'The site at that time was overgrown and dissected with old Jap trenches. Presumably because it was on the edge of the high ground overlooking the Warangoi Valley, the Japs had attached a lot of defensive importance to Vunadadir. The area comprises about 6½ acres of land which was leased from the owners - local people - and is situated fifteen miles from Rabaul by road. It is at about 1,200 feet elevation and climatically is one of the choice spots in the Rabaul-Kokopo area.

'In the early years newly elected Tolai councillors received elementary training in their duties at Vunadadir, and the Centre also acted as a buying and distributing agency - mainly for building materials - for newly established councils.

[3] Colin Liddle writes: The Iniet, Ingiet or Iniad Society was a very powerful magico-religious secret society among the Tolai. The German administration tried to stamp it out by force, and was fairly, though not entirely, successful. - R.S.P.]

All the quonset huts used by the Tolai councils as council chambers, schools, stores and so on, were originally purchased by the Local Government Centre at Manus and then re-sold to the individual Tolai councils. From 1952 onwards, as I have said, selected men were trained as council clerks. The Centre was also visited frequently by leaders from other districts of the Territory who wanted to find out what all this local government business meant. Funds for the development of the Local Government Centre were donated by the Tolai councils initially, and then by them with the Baluan Council. I think that each council initially contributed £50 per year. In 1955-56 the Administration gave the Centre a grant-in-aid of £970 for the erection of buildings. This was when the first permanent accommodation wing was built. Again in 1957-58 the Administration built two modern accommodation wings which housed 28 students, two to a room. Again in 1957 the students themselves constructed an administrative block containing two classrooms and an office. This block has been improved and extended each year since then. In 1958 the local government councils around the Territory agreed to contribute one per cent of their recurrent revenue annually to the Local Government Training Centre. With these funds the Centre was able to provide additional accommodation as well as to put in a water supply, ablution blocks, good toilets and messing facilities ...'

When Fenbury wrote his 1968 talk the government had been considering for several years the possible removal of the Centre to Port Moresby, to be incorporated with the Niugini Administrative College. The change was finally effected in the mid-1970s.

In 1957, in his comments on the Lambert talk on local government, Fenbury was canvassing the idea of a Territory-wide local government service:

'Apart from the training aspects, there is a looming need to institute arrangements designed to build up an inter-council cadre of trained local government clerical staff. What is required is a pool to cope with new units' demands and to provide reliefs and replacements for employees of older established councils. Thus far staffing problems have been met on an *ad hoc* basis by "juggling" between councils and the few trained native local government staff carried on the Native Affairs establishment. With an increasing spread of councils, such manipulations will become increasingly

difficult. The sort of clerical service envisaged should be, in my view, a career service with, inter alia, the following characteristics:

- (a) Training and appointment (see Reg. 14) to remain a Central Government responsibility;
- (b) Remuneration of clerks employed by councils to remain a local government responsibility;
- (c) Conditions of employment, including remuneration rates, housing, postings, leave, and pension rights to be subject to ultimate Central Government control;
- (d) Flexibility as regards employment by different councils, or by Central Government as the occasion arises, without loss of continuity in service;
- (e) Remuneration during training (including refresher courses) or during periods of employment by Central Government to be a Central Government responsibility, with arrangements for councils to share expenses. (The existing Tolai councils contribute to the Vunadadir Local Government Centre).

'In terms of metropolitan Government procedures, arrangements along the lines indicated above would be unorthodox, but in terms of Territory situations orthodoxy is not always functionally sound. Special legislation might be needed to cover what is required, and I suggest that this aspect, including the feasibility of linking the local government clerical service with the Administration Fourth Division, might be examined by the appropriate people' (Fenbury, comments on Lambert address to ASOPA Senior Officers' Course, 'Native Local Government', paras. 38-9).

This suggestion was also enacted in the 1970s. It had been on the files for thirteen years before the Minister for Territories approved draft proposals in November 1969 (*Encyclopaedia of Papua and New Guinea*, 1972:661).

An area culpably neglected by the Administration in the 1950s was the provision of technical and agricultural training for native participants in the development process - as the

Tolai councillors themselves complained to the Administrator in 1953:

There are two more things on education we would like to talk about. Firstly the Malaguna Technical School. Before the war this Technical school was the number one school of New Guinea. All the men who are now good carpenters and plumbers and mechanics went to this Technical school. But now Malaguna is not so good because the European teachers are short. Also there is no power to the machines, but all the Chinese can get the power for their business. We would like this school to be as good as before, because there are too many young men now that have not got good education as carpenters and plumbers and mechanics.

Then we still want the Agricultural Training School that we wrote about when your Honour was in Rabaul before. Since then a few men have gone to Sogeri, at Port Moresby, but only for a few months, and we do not think they will learn a lot about cocoa and other things that do not grow at Port Moresby. We would like an Agricultural school near the station at Keravet, and the Councils will mark some money to help this school in 1954 if the Government will open the school (*Address to His Honour the Administrator, Mr D. Cleland, from the combined Tolai Councils, dated 9 March 1953*).

This deficiency persisted, but not for lack of representations by Fenbury, of which these extracts from one of the memoranda he wrote in Canberra at the end of 1954 provide a relatively mild example:

'A prime function of native councils is to serve as media for the technical departments concerned in improving native living standards. The general arrangement evolved to date is one of shared financial responsibility between Council and technical department in the provision of the particular service. In Agriculture this sort of arrangement has not been implemented on a comprehensive scale because there are not yet any standardised arrangements for training natives in agricultural techniques. What is urgently needed is a properly constituted native agricultural training school, with a permanent full-time staff, equipped to handle an agricultural syllabus. Until such a school is in operation

the Councils will have no native personnel trained in elementary agricultural techniques, and this all-important aspect of the total endeavour must suffer accordingly. Whether such a school should be controlled by DASF or by Education is not for me to say. All I am trying to say here is that the continuing lack of such a school leaves a large gap in the pattern we are trying to achieve.'

On technical training he added:

'The problem here is simply that the existing technical training facilities, whilst good so far as they go, are inadequate to cope with expanding needs. The implications of a continuing shortage of native technicians are serious for the Territory generally. In the local government context it could result in the policy becoming perverted. Native energies and ambitions can only be channelled into activities directly concerned with raised living standards if there are native technical skills available. Without such skills at its disposal a Council can accomplish very little in material development. Under such circumstances the dangers of undue emphasis being placed on "political" activity, sterile regimentation etc. are very real. From the viewpoint of local government promotion it is essential that the whole policy of technical education be re-appraised. The need is urgent' (Fenbury to R. Marsh (Assistant Secretary, Department of Territories), 3 December 1954, paras. E1-2, 5, 7-9, F1-3).

Agricultural and technical training, at an elementary level, had in fact been pioneered in Niugini by the missions and was left almost entirely to them until the late 1950s. The first apprentice tradesman completed his training in 1958, and until that date government technical education had lagged even behind other forms of state education. The diploma-level Vudal Agricultural College was established on the Gazelle in 1965 (See *Encyclopaedia of Papua and New Guinea*, 1972, under 'Agricultural education' and 'Technical education').

Some of Fenbury's ideas on the preparation of generalist field officers for local government work were never acceptable to higher authority. As he has noted on the copy of one of his memoranda, there was a tendency to deplore his criticisms of the inadequacy of field staff training as 'attacks on his fellow-officers', while the Minister for Territories repeatedly made it clear that he thought Australia had nothing to learn from the kind of experience elsewhere that Fenbury advocated:

... ..

'Need for Training. The intended import of these notes is to stress the need for all officers concerned directly with natives to acquire, much more than they currently own, some concrete ideas of integrated native administration patterns, in which the desired ends are clearly recognised. I do not think we can hope to achieve this until specific inter-Departmental policies are laid down for specific tribal areas, and priorities determined.

'With this is the need for Native Affairs officers to appreciate that their primary role is to serve as integrators and organisers of the economic, social and political aspects of each area pattern. They must be able to see the pattern as a whole. It is here that we are falling down, and the consequences can be disastrous.

'Some observation of the developments and trends now occurring in other Territories would be immensely valuable in assisting officers to gain perspective. I strongly recommend that this Department battles to have at least two officers sent abroad each year, with specific assignments to be carried out. The British African colonies, particularly the East Africa territories, afford a wide field of problems and errors, bearing on our conditions here. It seems to me most strange that this Department, alone of those concerned with native development and welfare, is not sending officers abroad. It would pay handsome dividends and I am certain that most officers would gladly accept arrangements of this character in conjunction with leave. They should be required, of course, to submit formal reports on the particular aspects of native administration studied.

'I am aware that this issue is not new. As an officer who was fortunate enough to have been sent abroad and hence able to appreciate clearly the value of such tours, I have myself previously advocated sending others. It is submitted that the benefits accruing to the Administration from such tours far outweigh any temporary aggravation of staffing problems, and more than compensate for the expense' (Fenbury to Director of District Services and Native Affairs, 'Notes on Native Policy', 17 April 1956, paras. 42-5).

Area development schemes in action

Consistently with his belief in the central importance

of planned economic expansion under local government council auspices, Fenbury played a major part in the launching of a number of development schemes while he was Senior Native Authorities Officer in the 1950s. Among the earliest were the schemes to promote cocoa-growing on contiguous individual holdings on 'plantation' lines. The first of these, associated with the Rabaul Council, was begun in 1952 by the lease of land near the Vudal River. A similar scheme was later established in the Warangoi Valley through the Vunamami Council, and others were launched at Ambenob (Madang District) and Higaturu (Northern District). The main features of these schemes are succinctly outlined in Fenbury's 1957 letter to Hasluck from New York (which lacks a precise date):

'In the Vudal scheme - lately under fire for inefficiency, particularly by gentry who would like to grab the land - a 1000 acre lease of virgin bush was granted to the Rabaul council as a 99 years' agricultural lease. Half of the area - for reasons I won't go into here - was made available to council residents for food gardening only. The other half was carved up into 96 x 5 acre blocks, and sub-let, through sub-leases drawn up and executed by the Lands Department, to native applicants. The sub-lease agreements specify that the land must be cleared and planted with cacao by the sub-lessee within a certain time and according to certain technical requirements, that the blocks can't be transferred or further sub-divided without the council's prior approval, that the sub-lessee nominate his heir to the holding. A maximum rental was written in (to guard against future skull-duggery; at present no rent is payable). The council has provided assistance with transport, tools, roofing iron, rations (in the very early stages) and has installed a small saw-bench. The produce belongs solely to the grower. When the cacao is in bearing we propose to put in a control fermentary for supervised bulk processing and marketing; if this follows the lines of the central fermentary scheme currently operating in the Tolai area it will be a voluntary association, cooperative in character, but subject to sufficient Administration supervision to maintain adequate standards in processing and accounting.

'If you regard this sort of approach as agricultural collectivism, which to me connotes state ownership of land and produce, with production by gang labour working for wages or perhaps retaining part of the crop, then I can only say that the Australian Government has promoted a lot of collective farming since 1949.

'The Vudal scheme is a special situation in that the land in question was never owned by the sub-lessees, and is relatively distant (about 30 miles, with road access) from their home area. The Ambenob (Madang) scheme illustrates a "normal" situation. Current activity there is designed to achieve the same effect as in the Vudal scheme, by removing from customary tenure selected areas of "tribal" land, which the people currently own, and then handing these areas back, after sub-division, as leaseholds, with a guarantee of organised assistance (and pressure) and with certain conditions attached. In terms of native attitudes to cash cropping I see small chance of any of these schemes becoming brilliant successes overnight. They involve slow, persistent slogging, primarily by administration officers; but, most importantly, they will veer native thinking towards the concept of clearly demarcated individual holdings with sufficient productive capacity to raise family living standards. If, taking all factors into consideration, there is a more feasible and efficient point of entree than this to the problem of achieving control over land tenure, then it has completely eluded me.'

In a later account Fenbury noted that 'in both the Vudal and Warangoi Schemes the basic idea was to achieve the technical advantages of a relatively large plantation lay-out (facilitation of central processing, pest and disease control etc.) with the administrative and political advantages of individual small holdings. In both cases, also, the Administration only achieved slightly reluctant acceptance of the concept of individual tenures after much hard arguing'.⁴

Probably the best known of the Gazelle development schemes, however, was the Tolai Cocoa Project. Fenbury's account of it, compiled from drafts he made for this book, is as follows:

'The Tolai Cocoa Project has historical interest as Niugini's only large-scale example of native local government involvement in a secondary phase of indigenous economic

⁴Fenbury, paper on 'Existing Native Land Tenure Conversion Schemes in Papua and New Guinea', typescript, attached to a document headed POLICY WORKSHOPS and annotated in Fenbury's handwriting as written by himself in 'November 1960(?)'. The document includes an 'Introductory Note on Native Land Tenure' and descriptions of the similar council-assisted land settlement schemes at Ambenob and Higaturu and in the Warangoi Valley, as well as of the Vudal scheme.

development. It also indicated the sorts of economic advantages and problems that could accrue from actively encouraging area councils established under the 1949 Village Councils Ordinance to develop their roles as multi-purpose organisations. I think it is also a fair statement that the success of the Tolai Cocoa Project demonstrated that its organisational techniques were in tune with the psychology of at least the Tolai people.

'Prior to the Pacific War very little cocoa had been grown by the indigenous people of Niugini or by immigrant planters. About 1950, Niugini planter interest in the crop, partly influenced by the high world prices then prevailing, increased sharply. Tolai farmers quickly followed this lead. One of the further incentives that operated so far as the Tolai villagers were concerned was the false but widely believed rumour that the Government was adverse to indigenous people planting cocoa. This notion may have been deliberately circulated by some European planters but most probably received its impetus from the ruling of the Department of Agriculture that, as a disease control measure, cocoa plantings could only be made in blocks of 250 trees. This resulted in some energetic, if ill-informed, agricultural extension officers running around the country at odd times pulling out newly planted cocoa trees.

'From the viewpoint of local government officers, one of the primary objects of involving the Tolai councils with the villagers' cocoa was to circumvent the classic problems associated with peasant type processing and marketing of a slightly tricky and highly competitive commodity. A second and allied aspect of course was to obtain for the villager the optimum price for his cocoa beans. The councils were used as catalysts not only to give them a direct interest in furthering their constituents' economic welfare but also because in promoting economic development they were at the same time enhancing their own appeal to the tax-paying villager. It also happened that in the early 1950s the Tolai councils were the only financially stable native organisations in the area. The council legislation meant that the councils operated under administrative arrangements that facilitated injecting the requisite degrees of managerial and technical supervision into the Cocoa Project operations in ways that were acceptable to the villagers. The Project's finances and its accounting system were kept completely separated from the financial systems of the councils in terms of their normal estimates.

'The planning of the scheme was heavily influenced by the concept - an unusual one in Niugini - that a prerequisite to successful indigenous economic development was a consistent degree of active co-operation between the departments of Agriculture and Native Affairs. It cannot be said that this was ever widely practised. It was, however, achieved and maintained at Tolai Cocoa Project level, even though the record between the departments in regard to the Project at headquarters level was rather more patchy. Maintaining this highly important degree of inter-departmental co-operation at Project level involved the curious manipulation of seconding an agriculturalist to Native Affairs. The reasoning here - and I think it was valid - was that this precluded either department from upsetting the consistency of management that was absolutely essential to the scheme's success.

'At the headquarters end the co-operation was more sporadic and at times non-existent. In a letter written to Mr Harry Plant on 5 August 1955 I stated that it had been difficult trying to do business with the Department of Agriculture. The letter continued: "Tolai cocoa plantings are about 1.2 million and the agricultural estimate is that twelve central fermentary units will be needed for the next major flush. Jack Lamrock, who is relieving Conroy as Chief of Agricultural Extension, got a trial quote from Hornibrooks for one fermenting shed with vats and six sun driers of the moving roof type. Their quote was about £12,400. I think this is preposterous. Also it doesn't give us what is wanted. The DASF [Department of Agriculture, Stock & Fisheries] headquarters people - and I have had both the Director Larry Dwyer and Frank Henderson (Chief of Division, Plant Introduction, and the Department's cocoa expert) in on this - always seem to be rather vague and airy. They now say they don't like the kiln-type hot air dryers that were erected at a cost of £3,000 each and on DASF recommendations and designs and supervision at Natur in Vunamami and at Pelegia (Reimber). They gave no clear reasons. They don't seem to like the moving tray type of sun dryer and now say they prefer the moving roof type. I can see sense in this except that while moving tray types are easily constructed by native carpenters, moving roof jobs are not. The agricultural headquarters people also talk of the need for rotary mechanical driers but Henderson now says that he does not like the McKinnon type of drier and no other sort has ever been tested out here. The Kerevat Lowlands Experimental Station only has McKinnons. Henderson talked about buying and testing a new type of

German machine before passing it on to the project. All this is very fine but we have to put up a detailed scheme, unit by unit, and we have to move fast because unless we are in a position to handle the next flush we can forget all about trying to rationalise the Tolai Cocoa Project.

'The initial proposal that the councils should operate the bulk processing and marketing of Tolai cocoa was widely discussed at a series of meetings of growers and councillors and local government officers throughout the area. The response was enthusiastic. It is important to remember that the growers' decisions to join in the scheme were made by the growers themselves. The voluntary participation approach that had characterised the whole introduction of local government was carried on into this particular essay in economic development.

'The project started in 1950 with two crude single box cocoa fermentaries in two thatched huts, one in the Vunamami Council area at Kokopo, at Natur village, the other at Pelegia in the Reimber area. At this time only a trickle of village cocoa was being marketed but the number of cocoa plantings indicated that some huge increases in production were foreseeable.

'The initial installations were financed by appropriations from councils' revenue. As the rapidly increasing need for additional processing plants outgrew the councils' abilities to finance them from revenue, a £1,100 loan was obtained from the Department of Agriculture which had a revolving vote for such use. Subsequently three small loans were obtained from Treasury totalling £5,000 and repayable at $4\frac{1}{2}$ per cent interest. Between 1951 and 1955 production steadily increased. The volume of wet beans during the 1955 major flush clearly indicated the need for processing plant and bank finance on a scale hitherto unheard of in indigenous Niugini economic enterprises.

'On 7 September 1955 I wrote to the Manager of the Commonwealth Trading Bank, Port Moresby, on behalf of the Director of Native Affairs, requesting immediate bank loans for the Tolai councils for the construction of central cocoa fermentaries up to £83,000. This would be the initial instalment, the amount varying from £27,000 for the Vunadadir-Toma-Nanga Nanga Council down to £7,500 only for the Rabaul Council. The loans would be guaranteed by the Administration. The letter followed discussions that had taken place with

Commonwealth Bank officials in Port Moresby and with the Reserve Bank economist, Mr Don McKenna, who had indicated that Dr Coombs [then Governor of the Commonwealth Bank of Australia] had an interest in assisting native economic development in New Guinea. The letter to the General Manager of the Bank at Port Moresby emphasised this point when it asked for loan interest to be at the rate of $4\frac{1}{2}$ per cent, i.e. one-quarter per cent lower than the prevailing rate, and it added: "In view of Dr Coombs' keen interest in the Bank assisting native economic development it is confidently hoped that this application will receive sympathetic consideration".

'The General Manager of the Commonwealth Bank in Port Moresby had apparently not received any instructions from bank headquarters in Martin Place, Sydney. His response to this letter was coldly formal and sought our assurances that the enterprise would be properly managed, that the land ownership of the fermentary sites would be on a basis of clear western-type titles, and various other matters which indicated that he was not being particularly co-operative. As the proposal had been made on the basis of a government-guaranteed loan, and the fact that the land situation could not be resolved for at least another year had been discussed with Mr Allen, the Bank Manager, it appeared to me that he was not very keen. I went to the then Assistant Administrator, a former Commonwealth Treasury officer on loan to the Niugini administration, named R.W. Wilson. I told him that I had found the Commonwealth Bank to be not very co-operative, that in a venture where in fact they ran no commercial risk whatsoever this attitude was hard to understand, that time was now pressing, and that I proposed to go to the Bank of New South Wales. I expected an adverse reaction to this but it appeared that Wilson had had his own arguments with the Commonwealth Bank while a Commonwealth Treasury man and he assured me that there was no reason why we had to deal with the Commonwealth Bank although they had in fact handled the Tolai councils' finances.

'I then wrote to the Manager of the Bank of New South Wales on behalf of the Director of Native Affairs, again asking for total loan finance of up to £83,000 as the initial instalment to be spread among the Tolai councils, the loan to be repayable over eight years at $4\frac{3}{4}$ per cent interest and of course to be guaranteed by the Administration of the Territory. In this latter connection perhaps I should mention that Section 9 of the Native Local Government Councils

Ordinance - as the Village Councils Ordinance had been re-titled - was amended at the October 1955 session of the Legislative Council to specifically recognise the power of councils to pledge, borrow or mortgage. We had also obtained the approval of the Minister for External Territories for the inclusion of loans to native local government councils for the construction of utilities such as cocoa fermentaries as a "purpose of the Administration approved by the Minister under Section 59A of the Treasury Ordinance of 1955". Any loan exceeding £20,000 to any one borrower required separate Ministerial approval. The Manager of the Bank of New South Wales responded smartly. It appeared that the bank was scenting the breeze and was anxious to become involved in what seemed to be the beginnings of large scale indigenous business developments. He agreed to our proposals and the councils agreed that the loan should be obtained from the Bank of New South Wales.

'Between 1955 and 1960 the Tolai Cocoa Project obtained £227,020 of bank finance from the Bank of New South Wales at 4½ per cent interest. These loans were completely repaid by 30 June 1968. Competition for the villagers' beans became intense, with European planters and Chinese traders adopting a wide variety of stratagems to attract customers. Among the artifices used was the circulation of rumours at times quite unscrupulously.

'From its earliest beginnings the project's managerial organisation involved maximum grower participation. Legally the TCP was a council-sponsored and council-owned public utility. Administratively, while no share capital was subscribed by individual growers (in the mid-1950s "co-operative" was a dirty word on the Gazelle Peninsula following some unfortunate experiences), the Tolai Cocoa Project exhibited some of the characteristics of a producers' co-operative. While rather unorthodox, these arrangements seemed to the local government officers, who were basically responsible for the planning, to be well suited to the local conditions. The Tolai growers, so far as could be ascertained, agreed. The Directors of Agriculture and of Native Affairs, who had jointly signed the comprehensive submission to the Administrator recommending his approval of the government guaranteed bank loans required for launching the major phase of the project, also agreed.

'Each fermentary had an elected management committee. Growers' representatives elected by these committees

constituted a majority on the central Board of Management. The councils could legitimately have complained that while they were legally responsible for loan repayments they had only minority representation on this central Tolai Cocoa Project Board of Management. In practice there were no cleavages of interest between the elected council Board members and the elected growers' representatives. They were all cocoa farmers.

'In summary, the decision to run the project on unorthodox non-Rochdale co-operative lines (i.e. no share capital subscribed, non profit making, optimum grower participation) was made partly to reinforce the identification of the people with their own elected councils, and partly to demonstrate that it was the people's own concern, their own business, not that of the central government.

'Prior to launching the third phase of the project involving the major bank finance referred to above, the proposal and its financial implications were explained in detail by local government officers at more than thirty separate meetings of growers held throughout the Tolai area. At these meetings the fickleness already being displayed by some growers in the disposal of their beans, and the indigenous propensity for paying lip service to a proposal and thence doing otherwise, were aired in very frank terms. At the end of each of these meetings the growers were asked to state their views individually. Many did so. Generally, while showing some nervousness at their first involvement with big scale business, the village cocoa growers not only unanimously endorsed the proposals but also agreed to subscribe what I'll call here debentures as a guarantee of their good faith. This proposal was initiated by a leading Tolai cocoa grower, ToMeriba. I would mention in passing that the debenture subscriptions were commenced, but later cancelled on the legal advice that they would complicate the basic legal ownership position. The amounts that had been collected were then handed back to the individual subscribers. In retrospect I am dubious as to whether this was sound.

'So far as I am aware the techniques developed by Ken Gorringe and approved by the Project Board of Management to explain the project's functions to growers, including fluctuations in cocoa world prices and the relativity of wet bean prices to dry bean returns, were far ahead of any similar explanatory devices yet evolved in the Territory. It will be appreciated that in dealing with growers who were at that

time mainly illiterate, the techniques needed to be highly specialised. On each pay-out day, at each fermentary, the current production and price situation was patiently explained in Melanesian Pidgin and in the local language and demonstrated on a blackboard with tokens then used for illiterates, and queries were solicited.

'The bank finance stage of the project necessitated introducing a more complex accounting system. Initially the project obtained on loan from the Co-operative Registry an accountancy instructor. Later it obtained on loan the services of a Treasury accountant. On his departure the first project-paid accounts officer was employed, a Mrs. Judy Smith who was a qualified accountant with a Commerce degree.

'Prior to going to New York for two years in 1956, when the Tolai Cocoa Project bank loan finance stage was just beginning, I had got the Assistant Administrator to agree to set up an *ad hoc* committee as a central headquarters control device for the project. Its composition was to be the Assistant Administrator as chairman and the Chief of Division, Agricultural Extension and the Chief of Division for Native Affairs. Before I returned to Port Moresby from New York in late 1958 I was already receiving frantic letters from Gorringe and the District Officer at Rabaul saying that they could not get any satisfaction from Port Moresby regarding the second instalment of bank loan finance which was urgently required. On arriving in Port Moresby I found a rather odd situation. Wilson, the Assistant Administrator with whom I had made the arrangement, had long since returned to Canberra, and Dr J.T. Gunther, formerly Director of Public Health, was the Assistant Administrator. In the interim, administrative control over the Tolai Cocoa Project at the headquarters end had gone by default to Bill Conroy, the Chief of Division, Agricultural Extension at that time. The Native Affairs headquarters people appeared to be keeping aloof. Conroy, for reasons which were quite unclear to me, had been delaying and even appeared to be interested in the whole project breaking down. I attended by request a meeting of the *ad hoc* committee. It was the first which had been called I think for twelve months. At this meeting Conroy plugged - and here I am quoting from a note I wrote to Gorringe - some extraordinary lines regarding ownership of the project assets and the degree to which this was worrying Tolai people. These lines of argument were quite novel to me and had not of course been raised by anybody at Rabaul. They were however rather

in keeping with some equally peculiar opinions that Conroy had voiced at the 1958 conference of District Commissioners on land tenure problems which I had attended shortly after returning to Port Moresby. I asked Conroy at this *ad hoc* committee meeting a number of rather pointed questions for which I did not receive very satisfactory answers but which did succeed in infuriating the Assistant Administrator, who was in any case displeased with me at that time for my refusal to go along with the Chief Justice's report on the Navuneram riot which I had only just then criticised in writing. My note to Gorringer ended by saying that after this *ad hoc* meeting I had had some words with the Assistant Administrator and had told him, amongst other things, that the committee, which had been set up as an expediting device, had obviously outlived its usefulness and that any future intervention by Port Moresby should be a matter of direct negotiation between himself and the Tolai Cocoa Project Board of Management.

'My note continued:

There the matter rests. Gunther seems slow to realise how vague and woolly Bill can be even when he is on side. At present he is definitely not on side. Gunther also has no idea of the difficulty we have had in doing business with Agriculture [Dept.] on the organisation of this project. I have told him that if we had not managed to get you, the show would long since have fallen down. Beyond all this is the delicate question of whether [the] Agricultural Extension [Division] is trying to play the role of some sort of economic development commissar according to the whims of Bill Conroy. For example, I am quite interested in a letter he wrote to Lamrock, his representative in Rabaul, requesting him, so I understand, to approach the bigger growers re commencing their own fermentaries, or at any rate keeping clear of the central fermentaries. I raised this at the ad hoc meeting. Gunther did not ask Conroy to produce the letter, which I know was written. I would still like to see a copy of it.

My letter ends by saying "The whole business makes me cross. At this end they are at best hearty amateurs and at worst obstructing b....s".

'Amongst the many attacks made on the project by people whose motives were frequently somewhat suspect was one of over-capitalisation. It is correct that the Tolai-dominated Board of Management insisted on building more separate fermentary units than the maximum provided for in the initial scheme. It did so because it could not withstand the parochial pressures mounted by its grower constituents. Central fermentaries were status symbols. Even the public servants associated with the Tolai Cocoa Project were aware that it was cheaper to cart beans and expand existing installations than to build new units. But to maintain consistency with the initial philosophy that the project was the Tolai's own affair the local government officers concerned decided it was best to let the Board and the growers learn by experience. It should also be noted that the total fermentary processing capacity never exceeded that required to handle the major flushes. One of the oddities of the Gazelle Peninsula area is that mature cocoa trees, particularly those less than ten years old, produce more than two-ninths of their total annual crop over a six-week period, which also happens to be a period of uncertain weather conditions. One of the implications of this climatic factor was that the expensive artificial drying installations that the project needed to handle the seasonal major flush did not work at full capacity throughout the year.

'Despite the usual quota of processing troubles and the planning problems that arose from the lack of reliable data on such basic factors as the rates of annual increase in wet bean production that were to be expected in different localities, the degree to which the project achieved one of its basic objectives, i.e. high quality cocoa, is demonstrated by the number of times international cocoa buyers paid premiums on Tolai Cocoa Project bag brands. A second indication was the number of prizes that Tolai Cocoa Project cocoa won in open competition against plantations at agricultural shows. The scheme's success was mainly due to the dedicated efforts of such agricultural officers as Gorringer, Slinger and Duncan, and to Tolai leaders like Nason ToKiala, Napitalai, ToMeriba, Torvitovo, Kiapin, Tumain Karapa, and so on. With this of course there was the consistent support and overall managerial skill of the local government officers.

'As a non-profit organisation concerned with processing and marketing, the project's second basic objective was to get Tolai farmers the maximum return for their dried beans. In achieving this it had to contend with the fickleness of

growers, the unscrupulous tactics of some local traders, the unpredictability of the world cocoa market and the financing problems arising from the strong desire of big producers to maintain the system of advances and final payments and the needs of small men for immediate spot cash.

'The many factors involved in the fluctuations of grower support included the supplying of illicit liquor and credit by some traders, internal indebtedness (the Tolai debtor knew that his Tolai creditors would be waiting for him at the fermentary on pay-out days), cocoa stealing, mission opposition (including the establishment of rival fermentaries by Vunapope Mission), and internal village rows over matters unconnected with cocoa.

'However, as Dr T.S. Epstein has amply demonstrated in her analysis of cocoa production and sales in the Rapitok area, perhaps the biggest single pressure on growers to avoid the fermentaries arose from the anachronistic Tolai system of land use and matrilineal land inheritance [T.S. Epstein, 1968]. A man who had "illicitly" planted a permanent tree crop, i.e. cocoa, for his sons on a portion of vunatarai land to which he had only lifetime usufruct rights - land which was supposed to revert on his death to his sister's sons - dared neither to register the plantings with DASF nor to sell the produce openly. The understandable desire of Tolai fathers to secure a future for their children in opposition to the traditional system of matrilineal inheritance proved to be one of the major forces both embarrassing the cocoa project and dividing Tolai society.

'In an attempt to overcome these problems pressures were mounted to bind growers to their fermentaries by legislation. These pressures were originated by Tolai leaders. It was argued vehemently that the voluntary participation basis on which the scheme had been launched had created moral obligations. Those who reneged on the undertakings they had given to their own community enterprise should be legally bound. The decision of the Administration not to authorise the councils to pass restrictive rules (which, in any case, would probably have been no more effective than similar measures have been in Australia) was regarded by many Tolai as proof that the project was not favoured in some high administrative quarters. In passing I should mention that I was one of those who, without illusions, advocated permitting the passage of rules designed to bind growers to their fermentaries in the interests of allowing Tolai leadership to learn by experience.

'The massive withdrawal of grower support from the central fermentaries that was engineered by the Mataungan Association brought the project to the verge of bankruptcy. It was later re-formed on a company basis.^[5] This development of course would render the company liable for taxation of a sort that the project had not experienced and would inhibit the legitimate Administration subsidisation of the project that had been given in the form of technical assistance while it was a council-owned public utility.

'As indicated above, the project was frequently embarrassed both by fierce trader competition and by the desertion of grower members. Nevertheless it was successful in achieving its objectives, i.e. avoidance of the problems arising from peasant-type processing and haphazard marketing of a competitive commodity where quality was all important. The success of the project was largely due to the energy, skill and enthusiasm displayed by Mr K. Gorringe, an agricultural officer without technical qualifications who had been in and out of the Administration two or three times in the post-war period and who also combined knowledge of cocoa with remarkable energy and a flair for amicable communication with the Tolai people. In the early developmental stages of the TCP the tasks of training and supervising fermentary managers and clerks, of erecting buildings, installing equipment and organising processing and marketing were carried out entirely by Gorringe. He worked many hours of unpaid overtime and consistently performed well in an exceedingly onerous role, and was not even well paid for his services. A recommendation that Gorringe's services be recognised was subsequently submitted by me but presumably was rejected by Cleland.

^[5] Colin Liddle, who as a local government officer was closely concerned with the Tolai Cocoa Project throughout most of its history, writes: 'This was the New Guinea Islands Produce Company, formed by the growers who at that stage supported the Greater Toma Council, and who had inherited their local fermentaries and other assets from the Tolai Cocoa Project. The New Guinea Development Corporation, which was the business arm of the Mataungan Association, processed their cocoa at the other local fermentaries that had originally been TCP fermentaries, and used the same staff trained by the TCP and the councils. From the beginning of the TCP undertaking the field staff had attempted to show the people how to run their own business, and they succeeded.' - R.S.P.]

'In summary, the Tolai Cocoa Project was the first successful large-scale attempt to convert a native small-holder cash crop into a quality product. It is a matter for regret that the techniques successfully pioneered by the project, particularly the use of local government councils to foster economic advancement, were not emulated in other parts of the Territory. It was subjected to a wide variety of attacks, including of course the old socialism label. The essence of socialism is said to be public ownership of the means of production, distribution and exchange. The Tolai Cocoa Project was of course a processing and marketing agency which did not in fact assume ownership of the product at any stage. Its most consistent supporters were the relatively big Tolai growers, i.e. the local capitalist entrepreneurs.

'The considerations leading to the decision to utilise the relatively new local government councils as the media for organising and rationalising the equally new Tolai cocoa industry were outlined in a fairly lengthy letter written by me to Mr D. McKenna, an economist with the Commonwealth Reserve Bank head office, who had taken considerable interest in what we were doing on the Gazelle Peninsula and had indicated that the then Governor of the Commonwealth Bank, Dr H.C. Coombs, had indicated his interest in New Guinea native economic development. In this letter dated 25 June 1955 I listed the reasons why it had been decided to use the councils rather than organisations registered under the Native Economic Development Ordinance. I continued: "You will appreciate that there is a major point of native policy involved in [this decision]. We have been told that maximum emphasis is now to be placed on indigenous economic development over the Territory generally. The Tolai Cocoa Scheme is the first important move away from a peasant production type of indigenous economy. It is by no means a complete break with peasant production because in the Tolai area the people - and the Administration - are irrevocably committed to a messy pattern of customary land tenure which will evolve along the usual lines, i.e. increasing fragmentation of holdings as population rises, buying and selling of land, rise of an entrepreneur land-owning class, gradual emergence of a proletariat and tenant farming class and so on. The proposed development of the council-sponsored fermentary system still however raises the questions of whether native economic development generally is to be integrated with native 'political' development or kept separate. It is a decision that cannot be left to official preferences at district level. The verdict of the administrative history of primitive

tropical dependencies is, I think, overwhelmingly in favour of integration. If this view is accepted here, and I think it may be, one of the implications is that a new approach must be made to the introduction of economic crops in 'new' areas."

Chapter 9

Epilogue

The brighter theme of the foregoing chapters is the accomplishment of a handful of field officers, with the support of a number of indigenous leaders, in establishing and testing local government councils in the early 1950s, mainly on the Gazelle Peninsula, in accord with a coherent policy of comprehensive area administration worked out by themselves in specific Niugini contexts. The depressing counterpoint to that theme shows senior officials and the responsible minister of the day tacitly allowing this policy to be developed while failing to support it with the necessary authoritative decisions, and later, while actively spreading the forms of local government over most of Niugini, relegating it in practice to a very limited and ultimately ineffectual role. Fenbury predicted this outcome during the 1950s, and recorded it in the notes he made for an 'Epilogue' chapter.

As the book shows, throughout his years of close association with local government Fenbury reported his activities in detail to higher authorities including the Minister. In hundreds of pages of memoranda he carefully explained what he was trying to do and its relation to wider Australian and Niuginian interests, and repeatedly asked for policy decisions on issues affecting local government work. The few that were made were mostly negative, as on general taxation, village courts, and council powers over land. Fenbury's work is not even mentioned in the Minister's own account of the period, which dismisses the pioneering years in three slighting sentences.¹ Fenbury pointed out the wide administrative

¹An ordinance was made in 1949 and the creation of councils by the Administrator commenced. The early councils, closely supervised by district officers, mainly served the purposes of the Administration but introduced the idea of having elected representatives from each one of a group of villages. In 1954 an amending ordinance changed the name to Native Local Government Councils and from about 1956 a more

implications of the policies he and his colleagues advocated, and most of them were ignored. After some years of this even Fenbury was discouraged. In his 1957 personal letter from New York he taxed the Minister with condemning (in a conference at Madang) the established role of councils in commercial farming schemes like that at Vudal. After replying in detail to the Minister's reported criticisms of this approach, Fenbury repeated a refrain that runs through many of his official memoranda:

'From the field-staff viewpoint, the most disheartening aspect of all this is that it seems one never knows where one stands. The general policy line of promoting individual cash-cropping on a non-customary tenure basis, using area administration as the local tenure-control and capitalisation medium was first worked out in Rabaul area four years ago. Our approach was essentially cautious and empirical - it still is - and we can scarcely be accused of furtiveness, or of failing to examine the alternatives. Before I left to come over here last year I felt that at least that issue had been accepted as a regular policy measure, and my main reservations related to the degree to which it would be implemented (there is a time factor operating) and to the continuity and efficiency of the managerial aspects. Now it seems that you have thrown it all into the melting pot again.

... ..

'Within official circles, over the past couple of years, there has been some realisation - as yet dim and incomplete - of certain simple facts bearing on native economic advancement. I'd list the principal ones thus:

- (a) In controlled areas with an economic potential, a native policy without a clearly defined economic content just isn't worthwhile policy;
- (b) A tribal system of land tenure is basically incompatible with sound commercial farming;

1 (continued)

purposeful move was made to promote the formation of councils throughout the Territory and to introduce the idea that local people could handle their local affairs' (Hasluck, 1976:242). Significantly, the book does not discuss Raluana, Navuneram or any other political difficulties on the Gazelle.

- (c) In the long run, the tenure system developed for cash-cropping directly governs the amount of per capita production, indirectly affects the quality of the product, ultimately influences the pattern of political evolution.

'There has been quite a bit of paper on the subject, to which I have contributed my share - but there has been damned little action, and time is running out. The establishment of area administration in any locality immediately brings officers face to face with these issues. Half-a-dozen new councils have been proclaimed since I left the Territory, and there should be another six launched within the next twelve months. In all these areas the most urgent and important task is to lay the foundations of a reasonably far-sighted policy of economic development, without which local government is nothing but a dangerous sham. For reasons which were elaborated at tedious length in some of the papers listed below, I am absolutely convinced that we cannot hope to achieve satisfactory economic development without fully utilising area administration as a medium. Even then it's not easy. But as things stand, the unfortunate field officers immediately responsible for these area administrations still haven't anything approaching clear-cut policy lines within which to work. This after years of patient arguing, demonstrating, urging and warning. What irks me personally, being lazy, is that I can turn up copies of memoranda I wrote five years ago, pressing for clarification of one or another of some half-dozen issues, including land, and for all the effect they've had I might have written them yesterday.'

Fenbury occasionally twitted the Minister directly or through official channels with an ambiguous or ambivalent attitude to the functions of local government - for example in that same letter of 1957: 'Fundamentally, the question is that of whether these organisations are to be treated as integral parts of the administrative structure, or as vents for indigenous discontents. At present I'm not at all sure whether you yourself regard them basically as nice little political sops, or as potential Frankenstein's monsters.' In 1954 he had asked for an official ruling on whether councils were 'to be set up primarily as window-dressing for international purposes', or 'as media for systematic progress at native area level' (Fenbury to Director of District Services and Native Affairs, 'Extension of the Native Local Government Policy', D.S. 14-3-9 of 22 April 1954, para. 2(b)). He

received no clear answer at the time, but other evidence shows that his questions were shrewdly close to the mark. One example comes from Hasluck himself, quoting one of his own memoranda of 1959 which also seems to be quite oblivious of Fenbury's meticulous exposition of the integrated area development theme throughout the 1950s. Pondering, in the wake of the Navuneram inquiry, how to use community projects to develop 'new attitudes and habits and a civilised outlook in the community', Hasluck wrote:

... projects like the Tolai cocoa project may have economic value but possibly exacerbate or complicate some of our other problems simply because they do not take sufficient account of the effect of the economic undertaking on the community and on the direction of social change. ... I have a similar feeling regarding the growth of local government councils. We have thought of these mainly as a means of political advancement because there is some pressure from the world outside and a growing interest within the Territory itself for some form of political advancement. But again we have to try to integrate any political advancement with social and community change (Hasluck, 1976:268).²

Hasluck went on to float the idea of a Niugini department of 'Social and Community Development' (a fashionable panacea at the time) which 'would use the arts of persuasion to lead the people towards self-help and participation in community efforts for their own advancement ...' (Hasluck, 1976:269). Fenbury was right. He might as well have written not a word about local government over the previous decade. Back in 1953 he had already protested that his work in local government was 'the most thankless assignment I have yet undertaken', and that 'As the officer immediately responsible for implementing the local government policy I have frequently felt rather like a myopic forward scout whose platoon commander, without recalling him, has decided not to advance' (See Appendix III, paras. 70, 86). In 1966, a decade after what Hasluck calls the 'more purposeful' promotion of local government had begun, Fenbury assessed its current prospects in the following notes:

²Hasluck (1976:268) says that this memorandum was addressed 'in March 1959' to the Secretary of his department, the Administrator and the Niugini Public Service Commissioner.

'The local government system, first established in 1950, was initially regarded by the headquarters of the then Department of District Services and Native Affairs as political window dressing, primarily designed to placate the U.N. Trusteeship Council, and possibly useful as a sop to relatively advanced communities exhibiting some signs of restlessness. The reluctance of many senior Administration officers, the religious missions, the expatriate community generally, and some important elements of the indigenous community to appreciate that the new-fangled system was not only a changeover from single-village to local-area administration, but also a major new policy development, complicated life for its early practitioners.

'While the local government system, which now covers about 71% of the indigenous population, is still rapidly expanding, many of its political and administrative implications, including its future relationship with central government, have been, as yet, little studied. By and large, the answers to such important questions as the continuation of the voluntary participation approach to local government, the role of councils in area economic development, the optimum local government/central government financial and political relationship, the dovetailing of council rules with Territorial legislation, still remain as obscure to central government planners as to council hierarchies.

'The following generalizations on the workings of the local government system may have some significance in appraising probable patterns of political evolution.

- (i) The Ministerial policy decisions, reinforced by the 1960 Derham Report, not to establish a local court system based on local lay magistrates, and not to continue utilizing councils as agencies in fostering agricultural development, have tended to make the councils veer progressively towards being little more than agencies for minor public works and welfare. As such, they are failing to fulfil local aspirations, and are in danger of losing their popular appeal. If this trend develops, it could facilitate the emergence of area level political organisations outside the local government system.

- (ii) The levels of council supervision and stimulation provided by Administration officers vary widely. Quite apart from training, much still depends on the individual philosophy, the interest and personality of the particular advisory officer concerned. At the present stage of indigenous awareness, the somewhat difficult art of successful council supervision depends largely upon an officer's ability to steer a carefully tortuous course between paternalistic authoritarianism and feckless laissez-faire attitudes. Regarded as a training ground in elementary politics, the system is still pretty vulnerable to the whims and foibles of individuals - both officials and private citizens.
- (iii) Even in old-established council areas such as the Tolai, the councils have as yet little appreciation of their own potential political strength. Under the legislation, most council activities are subject to administrative approval. In fact, it is open to any well organized unit determined to achieve some legitimate objective (e.g. a role in land settlement which might not be favourably regarded by the local administration) to mount well-nigh irresistible pressures. (Except perhaps in the case of the Vunamami/Warangoi land settlement scheme, no council has yet exerted pressures of this sort.) With the advent of multi-racial councils, this situation could change. Multi-racial councils could become focal points for activity by crackpots or political operators.' ('Notes on Political Development in the Territory of Papua and New Guinea', probably prepared for a talk. The quotation is from paragraphs 24-6).

Fenbury also had misgivings about the policy adopted during the 1960s of amalgamating local councils into larger units. As he wrote toward the end of that decade in an essay published in 1971:

Amalgamations of area councils are now being vigorously promoted. The administrative advantages of this policy are liable to be neutralised by

unanticipated side-effects. Hopes that local government mergers would accelerate the emergence of national unity are not being borne out. Despite the development of a ward system it has become obvious that the bigger the councils grow, the further they become removed from the realities of village life. The changing attitude of the villager in the larger council areas has been reflected in declining interest in council activities, increasing reluctance to pay taxes, and in moves to vest ward committees with full council powers. To the Melanesian, impersonal government is unfriendly government; progressive involvement with institutions of Western civilisation frequently means progressive disillusionment. (Fenbury, 1971a: 190).

To the above analyses can be added a brief but prescient fragment from Fenbury's drafts for this final chapter: 'A widespread official feeling that Niugini local government is probably on the way out appears to be partly derived from a sense that central government politicians regard councils in their areas as potential rival spheres of influence - but mainly from the observation of increasing apathy by the villager towards a form of institution which he increasingly tends to regard as obsolete ...'

These Epilogue drafts remained incomplete, but the longest of them, looking back from the mid-1970s, will best serve as a conclusion:

'During the last ten years of my service in Niugini my responsibilities included approving applications for access to official records by research workers. I was thus kept informed of the increasing interest of social scientists and other categories of research scholars in the impact of post-war Australian Government policies on different Niugini communities. While I cannot claim to have seen more than a fraction of the resulting manuscripts submitted for official inspection, the Archives staff usually directed my attention to works that included observations on local government developments, functions and problems.

'My lingering impression of the relevant parts of these writings is of a diversity of evaluations with brickbats

greatly outnumbering the bouquets.³ Some widely varying interpretations were placed on the facts that while the "native village councils" introduced in 1950 drew an enthusiastic response from most of the Niuginian communities approached, they also promoted a wide spread of controversies. These ranged, in fact, from discreet bureaucratic disagreements, mostly recorded only in files, regarding the local government policy's status and implications, to highly publicised issues and incidents involving, at different times, indigenous community leaders, expatriate Government officers, politicians and businessmen, missionaries, newspaper editors and the courts. While the scholars' diagnoses of the causes of these controversies differed they seemed to be in general agreement that the ways in which the assorted policy issues underlying them were ultimately resolved - or left in abeyance - by the Australian Administration during the decade 1950-60 have potentially influenced important aspects of the emerging post-colonial Niugini scene.

'The assessment that local government councils have served as catalysts in national development is partly true, but for reasons different from those adduced by many academic observers. Undeniably, council activities tended to dissolve ancient inter-village antipathies. Conferences of Council representatives (and later, but less clearly, the operations of the Local Government Association) enabled councillors from different tribes and districts to discuss and develop common views on common problems. These developments can be justifiably regarded as important first steps in the long trek to national unity. But I doubt whether the Niugini local government policy can claim any significant success in breaking down inter-tribal chauvinism. Again, from their experiences as moderate and orderly pressure groups the early councillors learnt with bitterness that moderate and orderly requests for Administration help were usually less effective than the dramatised and disorderly tactics of their council opponents. The Niugini of 1974 may be more plentifully endowed with the legacies of what cynical field officers once called "panic Administration" than has yet been recognised.

'The Australian Government's Annual Reports on Niugini consistently suggest that from these simple council beginnings

³Speculations that the local government councils had significantly contributed to pressures leading to decisions to establish the University and the House of Assembly were surprisingly in accord.

at local area level there sprouted developments from which, without pain and within less than fifteen years, evolved a self-governing land set for nationhood. Viewed in broad historical perspective these comfortable official interpretations of events seem reasonably valid. It is a fact that none of the current crop of Niuginian political leaders has ever been gaoled for political activity and that many came up through local councils. The introduction of a common roll franchise in 1964 may have been ahead of popular demand, but through local government council experience a large section of the indigenous voters at least had a fair idea of what the House of Assembly elections were about. The national legislature was also prepared by having local government councillors as nominated Legislative Council members and observers, and later, by using local councils as "electoral colleges".

'The view that councils were catalysts in national development also postulates allowing the councils credit for many intangible results. Marked advances in the abilities of many illiterate Niugini leaders to express with confidence a viewpoint unpopular with Authority, to understand electoral procedures, the basic Western rules for debate and decision making, and the meaning of "recurrent expenditure", can be attributed to local council experience. So too can the more rational awareness of the powers and limitations of government that is now sometimes found at village level. Service as councillors has also given a few thousand senior villagers some appreciation of the managerial problems and frustrations of public administration. Altogether, while conceding that its lessons have been often harshly negative, and sometimes grossly distorted, local government can validly claim to have contributed significantly to the Western style political education of the Niuginian villager. Because of the distortions it is a contribution that has not always increased general political awareness. During recent years the villagers' attempts to graft some cuttings of imported political concepts onto the durable vines and in the matted little jungle that comprise tribal area politics have often produced odd results.

'But the achievements do not refute the judgment that the local government policy that was launched in 1950 never attained its objectives. Despite some temporary and partial successes, the councils were not able to develop their roles of local development, welfare and law enforcement agencies as provided for in the original ordinance. Neither have

they acquired the status and political significance for which their early members and mentors hoped. To this sad verdict may be appended a morbid prognostication: the chances that under an independent Niugini government the rural councils will be able to develop into the multipurpose area instrumentalities that their villager constituents still desire are not better than they were in the days of Australian hegemony.'

Appendix I

Explanatory talks on council taxation

(From Department of Native Affairs Standing Instructions:
Finances of Local Government Councils, vol. II, pp.167-74.
Government Printer, Port Moresby, 10067/10.63)

Explanatory talks on taxation must form part of the preparatory work carried out in all areas where the introduction of area administration is contemplated. This is a highly important task, not to be skimped. These talks should be recapitulated at general meetings of taxpayers, after councils have been established.

Officers responsible for initial propaganda work must constantly bear in mind that the local government policy is being currently applied on a basis of voluntary participation by the people, (without, as yet, any re-introduction of general taxation). From a purely fiscal viewpoint, this amounts to asking certain sections of the indigenous population to agree to tax themselves for various local purposes, including that of sharing with the Administration the costs of services which other communities, at least for the time being, will continue to receive free. Some organised resistance to the introduction of local government may now be expected in almost every area; it is natural that much of this opposition, irrespective of its origins or the underlying motives of the objectors, will be focused on taxation. Anti-council propaganda usually follows the line that whilst local government administration may be a very fine idea, the people cannot yet afford to pay taxes.

This attitude should be anticipated, firstly by explaining the historical evolution of democratically constituted government; secondly by making it clear that local government tax rates are primarily a matter for local council decision; thirdly by emphasising that the priority task of area administration is to organise measures for increasing local incomes. It has been found that the most effective way to dispel honest doubts arising largely from complete ignorance of world history, is to explain fully that local government organisation is not a new idea. The villagers must be faced squarely with the facts that the policy opens to them a well-beaten path leading to higher living standards, but it is not a short cut to Utopia. It marks the commencement of a long and arduous journey which must be made by all people who aspire to a better life for their children. Explanatory talks should cover the following ground:

1. (First Series). Simplified historical sketch of the development of European civilisation and the evolution of democratically constituted parliamentary government in Great Britain, with its subsequent spread to other countries.
Principal points:

(a) Two thousand years ago the people of Europe, like those of most other countries, lived in small tribal groups, and life followed much the same pattern as in primitive parts of the Territory today. Machines and guns were unknown; fighting, which was almost constant between the groups, was done with spears, clubs and arrows. Living in a cold climate, the Europeans had to build solid houses, to wear clothes made from skins or other materials (although the ancient Britons also painted themselves) and to grow foods they could store during the winter. Fulfilling these needs caused them to work harder than do the people of most hot countries, and from this grew the urge to improve their way of life.

(b) As Europe is a big land mass, tribes could easily invade the lands of other tribes, and they frequently did so. One result was that new ideas on tools, weapons and agriculture could spread from one area to another. Thus the use of iron and other metals became widely known. Another result was that in time Europe came to be divided up under warrior leaders who conquered the weaker groups, and set themselves up as kings.

(c) The early kings governed their countries themselves, with the help of councils of the leading warriors and other big men. The kings administered justice, collected taxes and spent the money as they thought fit. The kings were the Government. But as population increased, and knowledge increased, the amount of government business became too great to be handled by one man assisted by a small council. Gradually the idea developed in England that the people should take over the work of governing the country by electing suitable men to a big council which would relieve the king of many of his duties. This idea only prevailed after much trouble, but it finally resulted in a system whereby Parliament, the name given to the big council representing all the people, looked after all major government matters. Local area matters were controlled by local area councils. The king remained at the head as the father of his people, but he no longer had the same work to do.

(d) This idea, of the people being governed by men chosen by the people, and able to be changed by the people, spread from Britain to many other countries. The people of Australia, New Zealand and Canada, whose ancestors came from England, all have governments of this kind, and they are also proud to acknowledge the King (Queen) of England as their Queen, because she signifies that they are all members of one family. Some of the many other countries that are governed by elected councils have Kings or Queens of their own; others like France and America, have Presidents who are elected by the people in the same way as the governments are elected. There is no country where everything is perfect, but all over the world, the people who have advanced most are those who have done the hard work of learning how to govern themselves, and to pay for the services that are needed to make their lands good places in which to live. In those countries where Russia has control, the people have no real say in the government, their living standards are poor, and they are not happy.

(e) The Government of the Territory of Papua and New Guinea, appointed by the Australian Government, is headed by the Administrator, who is helped by a big council (Legislative Council) and by the officers who are employed by the Government. Three of the members of this big council are natives, but most of the native people are still a long way from knowing very much of the work of the government. The Australian Government is very keen to help the native people of this Territory to raise their standards of living. One reason is that these islands are very close to Australia, and the Australian people want good neighbours. If the people of Papua and New Guinea want to advance like other countries they must learn to look after their own affairs, to produce things to sell, and to pay for their own services. That is the purpose of the Native Local Government Councils Ordinance. The Government can show them how to do things, but the people themselves must make the effort. It means more work, but there is much to be gained. It is a long slow task, and the sooner it is started the better. Unless the native people learn to work together, become strong, increased in number, and make more use of their land, they will not be strong, and people from crowded Asia may ultimately come in and take their country from them.

2. (Second Series). Simplified account of the functions and taxation methods of democratically constituted national and local government bodies. Principal points:

(a) A democratically constituted government consists of a council of people elected to office and given the power to control public affairs and to

provide public services. Their work is to serve the people. (If desired, a brief description of the political party system, and of the Cabinet may be inserted here. References to the two-chamber system are probably best omitted.)

(b) Every government responsible for the whole of a country has three sorts of work to do:

Firstly, it must provide courts and judges to administer justice, and it must provide the means to keep order.

Secondly, it must make whatever laws are needed for the security and welfare of the people.

Thirdly, it must carry out all the works that are required to make the country a good place in which to live, and to do this it must employ a lot of different sorts of people.

(c) In most countries there is too much work to be done by just one big council, or government; hence it is usual to find underneath the principal government council a number of smaller councils that share in the government work. When we speak of the Australian Government we mean the big council that controls all the big matters that relate to the whole of Australia, such as the Army, Navy, Air Force, Post Office and Customs. But there are also six state governments in Australia. These look after such matters as health, education, roads, police, prisons and water supply. And underneath these six "second line" government councils there are a great many smaller area councils, that attend to local area matters. In America, underneath the big "Number One Government" there are 48 state governments and thousands of smaller councils. All these councils have their own work to do, but they are linked together, like the different parts of the engine of a motor truck. A truck will only run well when all the parts of the engine are working properly. In this Territory the government engine cannot do its best to serve all the people until the native people contribute their part of the engine. The native local government councils are the part of the engine that the native people have to build up first.

(d) To carry out their functions, all governments must have money. They work with the peoples' own money, because the government belongs to the people. The money is obtained in many different ways, but the most common method is for the people who earn money to pay a portion of it to the government that they themselves have chosen to look after their affairs. That is how the Governments of Australia, England, America and every other country whose Government is elected by the people get their money. This method of pooling money for the Government to use for the good of the people is known as taxation. It is the duty of the Government to look after these community funds and to spend them wisely for the public good. If the tax-payers do not like the way a government handles their money, they can put in a new government at the next election.

(e) Precisely the same principles apply to local government bodies. Operating in conjunction with the Central Government (or "big Council") these small councils collect taxes and apply the proceeds to local area works. There are many different forms of taxation, but the principle is the same in all cases.

(f) Revenue is derived from customs duties, licence fees, and taxes both on goods and personal payment, but the major portion (relevant figures should be quoted) of the Territory Administration's income is given to it by the Australian Commonwealth Government. The Australian Government, that is, the big Council elected by all the people of Australia, gets its money from the Australian people, who in addition to paying Customs Duties, licence fees etc. also pay income tax; that is, a portion of the money each person earns each year is paid to the Government which the people themselves have elected to rule

them. Under this income tax system, the more money a man earns the more tax he pays. Companies also pay tax. All the works done by the Government, and all the people employed by the Government - men in the Army, Navy and Air Force, doctors, teachers, surveyors, policemen, clerks are paid with money collected in taxes, customs duties and so on.

(g) The people of Australia are thus, with their taxes, bearing most of expense of governing this Territory, including the medical, educational and agricultural work being done for the native people. The Australian Government is spending a great deal of money on this Territory, (which it did not do before the War), because it has undertaken to look after the native population, and help them advance. But the native people must understand that nobody likes paying taxes; most of the people in Australia have never seen Papua and New Guinea and never even think about this Territory. They will not be content to let the Australian Government spend their tax money on another country for ever.

(h) Therefore, if the native people have regard for their children's future, they must begin learning to help pay for their own services. Until they can do this, they remain in the position of small boys waiting for presents.

(i) The Administration applies a tax to everybody in the Territory as every other country does. This tax goes to the Administration Treasury, to spend as the Administration thinks fit. The Administration has provided a means, through the local government system, for the people to start learning to look after their own local affairs, and to tax themselves through their own councils, and spend the money themselves on local works.

(j) The people must understand that in the Council system they have been given authority never before granted to native communities in the Territory. Under the council laws, the councillors themselves, the peoples' own representatives, can decide what tax should be paid by people in the Council area, and how that money shall be spent. The function of Native Affairs' Officers in regard to tax is to assist the Councils in arriving at tax rates that the people can afford to pay, but which are large enough to enable the council to do things for the people, to guide the Councils in how the money should be spent, and to make sure that all the council's accounts are properly kept. A council without money is like a motor truck without petrol. The work done in the areas where there are already councils shows that the native people can achieve a great deal to raise their living standards by learning to pool their resources and work together.

Appendix II

'Native Local Government Memorandum No. 1', 4 February 1952

Department of District Services
and Native Affairs,
PORT MORESBY.

4th February, 1952.

CIRCULAR INSTRUCTION No.141

To All District Commissioners and
Assistant District Officers.

NATIVE LOCAL GOVERNMENT MEMORANDUM No.1

Organization and Supervision of Councils

Note: This instruction is to be read in conjunction with Circular Instruction No.130 of May 2nd 1951, which provides background information & summarises the salient points of the N.V.C.O. and Regulations.

Objects of the Policy:

1. Administration policy is to gradually replace existing systems of native administration through unofficial councils, Village Constables, Luluais and tultuls, with legally constituted Native Village Councils that will be established area by area as the people become ready for them. This new policy is in logical sequence to what has been done todate. Its basic aims are:

- (1) To provide a medium for teaching natives to assume a measure of responsibility for their local affairs in accordance with democratic procedures;

- (ii) To provide area machinery and local funds for extending and co-ordinating social etc. services at village level, and hence to enlist active native support in endeavours to raise native living standards;
- (iii) To face the native population squarely with the facts that progress is inseparable from good order and industrious habits, and that social services have to be paid for;
- (iv) To prepare the way for ultimately fitting the native people, in a way they can understand, into the Territory's political system.

Native Authorities Section:

2. The supervision and guidance of these Councils remains within the sphere of native affairs, and hence is the concern of all officers of this Department. A special Native Authorities Section has been established within the Department, and the officers thereof are concentrating on this particular aspect of native administration. It is not the intention, however, that the officers of this Section will be wholly responsible for the activities of Native Village Councils. Their role is to provide guidance and assistance in the initial organization of councils, of a more concentrated type than District staff, in terms of man-hours, will normally be able to afford. District Commissioners will provide every assistance to Native Authorities Officers and will ensure that the members of their staffs do likewise.

3. Native Authorities Officers posted to Districts to provide specialised assistance in the establishment of Councils are to be considered as Officers of the District Commissioner's staff, but they are not to be employed on any other duty, except where as Members of the Court for Native Affairs or Court for Native Matters they may, with the consent of the District Commissioner, function as such. (N.B. This is desirable, particularly in regard to the hearing of appeals from Native Courts when these are established. It is anticipated that a Bill to provide for the establishment of Native Village Courts will be brought down at the next meeting of the Legislative Council.) They should not, however, have resort to statutory powers to compel natives to carry out any preliminaries to the establishment of Councils.

4. It is the intention that the Senior Native Authorities Officer will be ultimately stationed at this Headquarters, and Native Authorities Officers within Districts will, through the District Commissioner, communicate directly with him on all aspects of native local government activity until such time as supervision of the councils established passes to the District Commissioner's ordinary field staff (vide paragraph 6 of this instruction). Matters which, by virtue of the Ordinance and Regulations, require reference to and action by the District Commissioner, however, will be referred directly to the District Commissioner during this inaugural stage. Where there is any conflict of opinion between a District Commissioner and a Native Authorities Officer on Council or Court Affairs, the matter will be referred for decision by the Director.

5. No firm decision has been made as to the tempo with which Councils will be instituted. It is expected, however, that District Commissioners, in consultation with Native Authorities Officers within Districts, will, on the basis of their assessments of local native situations, submit periodic recommendations in this regard to the Director.

Responsibility of Field Staff for Supervision:

6. Once a Council is functioning and its members and people are aware of their responsibilities, supervision will devolve upon officers of District Services field staff as part of their normal administrative duties. It therefore behoves all field staff officers to acquaint themselves thoroughly with the principles of administration through Native Village Councils and, ultimately, Native Courts.

All Officers must become thoroughly conversant with the relevant legislation and be prepared to carry out the supervision and guidance of Councils as part of their routine work. There have been one or two instances which indicate that some Officers are not in favour of the policy, with its implied political advancement of the native people, and are inclined to impede plans for the inauguration of Councils, or at least to display a marked lack of enthusiasm for them. Such attitudes will not be tolerated, and every officer must do his utmost to ensure he provides the maximum of assistance when required.

Preliminary Organisational Work:

7. It is not the intention or the desire of the Administration to force the local government system on the native people, but action is to be taken to explain and make generally known its advantages, including the fact that it is part of the plans of the Administration for the advancement of the people, and that only thus can they be trained to take a greater part in the management of their own affairs. All approaches to native groups for the purpose of establishing councils will be governed by the District Commissioner as the overall authority in the District. The first approach must be made on the spot by a European Officer. If any antagonism is encountered or anticipated, a native authorities officer should be accompanied by a member of the District Field Staff of sufficient seniority to act on behalf of the District Commissioner and empowered to direct that further work be discontinued for the time being if necessary.

8. Under the terms of the Ordinance, Councils are established by Proclamation of the Administrator. A proclamation lays down the constitution of a Council and fixes its area. This, as the legislation stands, can only be varied by amending Proclamations. In considering the demarcation of projected Council areas, therefore, care must be taken that both the aims of the policy and the desires of the people are adequately met. Each council area must contain a population sufficiently numerous to support a unit whose revenues (once authority to levy tax has been granted) will be large enough to permit it to carry definite executive functions, including sharing in the cost of local social etc. services. Information gained in compiling the electoral roll/tax register must be carefully assessed from this viewpoint, bearing in mind the economic conditions of the area. Provided there is reasonable accessibility between groups, common interests, and mutual consent, there is no fixed limit to the maximum size of a local government unit. (From the viewpoints of functions and financial supervision, the larger the unit the better.) There is, however, a minimum size of population grouping beneath which the policy cannot operate effectively. This minimum figure will vary somewhat, according to the economic status of the group. Experience gained to date indicates that a unit containing fewer than 4000 persons is to be avoided if possible. Consideration is being given to the introduction of arrangements whereby several small separate units may be able to pool their finances in a central treasury. Meantime District Commissioners will bear in mind that a basic organisational problem is that of effecting voluntary combinations, in sufficient numbers, of parochial village groups whose tradition for centuries has been one of separatism. Patience and tact are essential.

Local Government Elections:

9. As far as possible Councillors will attain office through elections. (Only in the unlikely event of a council-minded population being too backward to understand an electoral process will District Commissioners resort to appointment of members to office by nomination.) Voting at initial Council elections should be open to all adults of the constituent villages, and may be in the form of an open ballot. Voting at subsequent elections must be confined to tax-payers and holders of exemption tickets, and should be via supervised secret ballots. Where it is possible to educate a population into the idea of proportionate representation before a Council's draft constitution is finalised, this should be done, and the

initial elections organized accordingly. In those cases - probably a majority - where the local situation necessitates providing initially for representation on a village/member basis, efforts should still be made to avoid major disparities in the sizes of electorates. As a rough guide, one councillor for each 250-300 of population is recommended. Prior to initial elections the existing village officials must clearly understand that they are eligible as candidates. All elections must be supervised by European officers. It should be impressed upon the native people that Councils are their own representative bodies working for their own advancement and they should not be influenced by outside interests to forward those interests. Only for grave reasons will District Commissioners exercise their right of veto regarding the assumption of office of duly elected candidates. All such cases are to be reported to the Director. The acceptability of council members to the people is a keystone of the system. Adequate machinery exists for the removal of members who prove themselves unfit to hold office. An Officer is fully entitled to inform the people of his assessments of the ability of sitting Councillors seeking re-election. All Council Members are to be encouraged to keep closely in touch with their constituents by organizing their own unofficial advisory committees.

Control and Guidance of Councils:

10. It must be clearly understood by all officers that the establishment of a Council does not imply a sudden leap into an unenlightened sort of local autonomy by the population group concerned. Control of all major local government activities remains vested in the District Commissioner. Sagacity in the application of these controls is a major factor in the art of teaching natives responsibility and self-reliance. Councils must be expected to make some mistakes. For many years to come they will lean heavily on Field Staff for advice and assistance, which must be freely and sympathetically given. The all-important educational aspects of the policy (vide paragraph 1) must be constantly borne in mind. Incorrectly handled, administration through local government bodies can still be direct rule in the narrowest sense. There is a golden mean between a Council whose executive work is technically efficient because it is all being done by an impatient officer without reference to the Councillors, who thus learn nothing, and a Council whose members, through lack of official guidance, are accomplishing nothing - and learning nothing. The policy provides unique opportunities for enthusiastic officers to enlist the active support of the people and show what can be done.

Council Meetings:

11. District Commissioners are to ensure that a programme of statutory monthly meetings for all Councils within their districts is drawn up at the commencement of each year, and is carried out. Copies of the timetable are to be handed to all technical department officers within the District whose duties concern them with Councils. Major items of Council business, including preliminary debates on annual estimates, should be reserved for these statutory meetings, which should be attended by a District Services officer. District Commissioners should make it a rule to attend some of these meetings personally. Arrangements should be made for Departmental Officers to attend Council meetings when they can be of assistance in relation to specific matters.

12. Apart from these statutory monthly meetings, Councillors are to be encouraged to meet as often as Council business warrants. In the early stages of a Council's existence, frequent meetings will be necessary for instructional purposes. Simplicity must be the keynote of meeting procedure, but some degree of formality in conduct is desirable. Officers will bear in mind that the first object of council meetings is to teach Councillors to publicly voice their views on council affairs and proposed council activities in a coherent and orderly manner. To achieve this requires patience. Business is to be disposed of by simple resolutions, passed or rejected in accordance with the provisions laid down in the Regulations.

More elaborate rules of debate, including the handling of proposed amendments to motions, may be introduced by officers as the Councillors become ready for them. Care should be taken that in recording their minutes of meetings, Council Clerks set out all resolutions clearly and accurately. A District Commissioner's Rule Certificate should be typed below an English translation of the Rule. This English copy of the rule should be free of technical legal flaws, and should be used for interpretation in the event of any legal proceedings being instituted for breach of the rule. Council meetings should normally be open to the local native public, which should be officially encouraged to attend as spectators.

Council Clerks:

13. A Council should be able to keep its own books. To do so it must employ a competent native clerk. Once a decision to establish a council has been made, finding a suitable clerk should be a priority task. The basic educational qualifications for clerical appointees are a good standard of literacy in the lingua franca, proficiency in ordinary arithmetic, and sufficient knowledge of basic English for the writing of cheques etc. Thus equipped, an intelligent man can be taught his duties in a few weeks. Plans for the establishment of a local government training centre, to cater for both clerks and councillors (elected and potential) are in hand, and District Commissioners will be advised further in due course.

Position re Village Officials in Council Areas:

14. As Village Councils will replace the existing system of administering a population through village officials, immediately a council is established the District Commissioner should terminate the appointments of any tultuls in the Council area and should submit to this Headquarters recommendations regarding the termination of appointments of the Paramount Luluais, Luluais, and Village Constables who have been holding office in the area. (District Commissioners have not the statutory authority to terminate these appointments themselves.)

General:

15. It is recognised that until a system of direct taxation applicable to all natives is introduced, an anomaly will exist in that natives of Council areas will be contributing directly to the cost of their own social services, or to the supplement services provided by the Administration while many natives outside Council areas will be receiving similar benefits from the Administration tax free. It is hoped that this anomaly will be removed by the re-institution of a direct tax applicable to all sections of the native community. Any such legislation will include provisions defining the position of natives residing in council areas.

16. Additional Circular Instructions on the functions and finances of Native Village Councils will be promulgated shortly. For convenience, all Instructions dealing with local government matters are being sub-grouped into a series of "Native Local Government Memoranda".

(J.H.Jones)
Director, D.D.S & N.A.

Appendix III

Memorandum, 'Native Local Government', 24 October 1953

DS.14/11/6.

24th October 1953.

Director of District Services
and Native Affairs,
PORT MORESBY

Native Local Government

Reference DS.1-1-3(11) of 8th October, 1953, with enclosures, received here on the 14th October, 1953.

As instructed, the following comments are offered on the Minister's Minute of 4th September, 1953 and on the future of 'Native Authorities' work.

2. Before the best ways and means of achieving our aims can be decided there must be complete clarity on just what are the aims. After reading the documents I am not at all sure that there is unanimity in outlook regarding the emphasis that is to be laid, as a matter of deliberate policy, on different aspects of the fundamental administrative issues involved. For this reason I consider it desirable to preface my comments on the methods of applying the local government policy with certain generalisations which may have some value in terms of general perspective.

3. The Minister's pertinent observations have left me with one query: my impression is that he appears to regard the local government system of native administration primarily in terms of native political advancement. It may be that I am mistakenly applying a more restricted meaning to certain phrases in his Minute than the Minister himself intended; but in any case clarification of the point is of the utmost importance in determining what should be the Administration's approach to the local government policy's implementation. If the policy is regarded primarily as a medium for native political advancement, - in effect, as a process of sowing dragons' teeth? - then our attitude towards it should be exceedingly cautious and calculating. Moreover, the existing local government pattern, which to date has placed maximum emphasis on the function of councils as financially self-supporting media for raising native living standards, should be modified.

4. The current objects of the policy, as enumerated in Para. 1 of Circular Instruction No. 141 of 4/2/52 (Native Local Government Memorandum No. 1) are:

- (i) To provide a medium for teaching natives to assume a measure of responsibility for their local affairs in accordance with democratic procedures;
- (ii) To provide area machinery and local funds for extending and co-ordinating social etc. services at village level and hence to enlist active native support in endeavours to raise native living standards;

- (iii) To face the native population squarely with the facts that progress is inseparable from good order and industrious habits, and that social services have to be paid for;
- (iv) To prepare the way for ultimately fitting the native people, in a way they can understand, into the Territory's political system.

5. In implementing the policy todate, ninety percent of the Native Authorities Section's efforts have been devoted to objects (ii) and (iii). Object (i) has been primarily a matter of electoral processes (in which little or no political consciousness, in our sense of the term, has been evident) and of internal administrative procedures. Object (iv) has been regarded as a long-range process, subsidiary to, and evolving fairly automatically from, the attainment of the other three.

6. A fundamental question, which I think we must constantly ask ourselves, is:- In what directions do we want the native population of the Territory to evolve?. As custodians of Australia's front door our answer to this, as I see it, can only be given in terms of our own basic aim. This - whether or not we profess it publicly - must be, more or less:- to devise means that should answer both the short and long term requirements for Australia to maintain political control over the Territory for a very long time to come. Crudely, this means giving the native population a vested interest in living amicably with us.

7. The basic aim may be clear; the problems lie in the means. Colonial administration is a notoriously tricky art whose history is so thickly strewn with failures that many observers have come to doubt whether anything more than partial and temporary success is humanly possible. Whilst I personally take leave to doubt this, it is undeniable that we have a very large fund of others' experience and errors on which to draw in approaching our own immediate broad task. The problem in this Territory is that of governing and fitting into our system of government a primitive majority whose culture, values and institutions differ markedly from our own. With this, a people split into a bewildering number of tribal and lingual groups, politically fragmented, immensely ignorant, intensely parochial and thinly spread over exceedingly difficult terrain.

8. In the terms of our basic aim, and within the limits imposed by these factors of terrain and population distribution we have to guide as many of these people as is possible to a condition where new economic and social interests are substituted for many of the old; where they will regard us, if not gratefully, at least as necessary adjuncts to their continuing well-being.

9. Successfully pushing people along these lines can never be a matter of adhering to immutable formulae, but it is frequently a matter of carefully calculated emphasis and skilful timing. Faulty timing, particularly in regard to the devolution of political responsibility, has been the most frequent immediate cause of colonial unrest. The Minister (para. 10 of his Minute) has stressed this danger. My purpose in mentioning it here is to express the view that faulty timing becomes inevitable, if the native population's political advancement is allowed to outstrip its economic and social development - if the stage is set for a politically conscious and disgruntled educated elite to emerge whilst the majority are still diseased and ignorant subsistence gardeners, leavened with semi-literate clerks.(1)

(1) Setting aside our national interests, our responsibility as a civilised and civilising power must be to the native population in general, not a handful of individuals. Good old fashioned imperialism perhaps - but I rather doubt whether the Indonesian intellectuals' battle cry, "Better a Hell run by Indonesians than a Heaven run by Dutchmen", still finds an answering echo amongst the Indonesian paddifyields, if indeed, it ever did.

10. The rectifying of such situations, in which problems of human and racial relations are always important factors, is largely beyond the scope of normal administrative control. But their development can be retarded, and to some extent canalised, by avoiding certain classical faults in administrative emphasis, particularly in regard to the handling of native leadership and general education policy. It is imperative that we try and avoid the obvious traps.

11. Putting it badly and crudely, our best chances of doing so would seem, *inter alia*, to lie in:

- (a) Absorbing the energies of native leaders into area administrative machinery which is geared to give maximum emphasis to the economic and social aspects of native advancements; and
- (b) aiming for a wide spread of technical and agricultural education rather than a narrow concentration on secondary and tertiary education for the few.

12. Our quickest road to failure will be to hand out social services haphazardly whilst otherwise leaving the native population to cope with the culture-contact situation as best it can. We have already advanced some distance along this primrose path.

13. In the above paragraphs I have attempted to indicate some of the risks that lie in regarding the local government system as little more than a political sop to advancing native communities. It this is in fact the status of the policy, my own approach to it, todate, has been quite wrong. The current attitude of the Native Authorities Section towards its task has been based on the following proposition: Without some form of clearly defined and systematically regulated administrative machinery in native areas, no consistent policy of native development of any sort is possible.

14. It does not seem necessary to expound this proposition at any length, for the existing facts speak for themselves. In most Districts, Native Administration as it affects District Services has not been developed beyond first phase requirements: pacification and enumeration of tribal groups, the clearing of tracks and building of rest-houses, extension of the village officials system, introduction of elementary sanitation and the maintenance of law and order.

15. It is not arguable that at the present time there are still large "new" areas where these preliminary administrative measures meet the needs of the local situation. It must be further admitted that there are many other areas where lack of communications and scanty population render more progressive measures impracticable, at least for many years to come. But it is also significant that many Field staff, posted in areas with marked potentials that have been controlled for upwards of forty years, have been conditioned into considering that periodic census compilation and maintenance of a minimum standard of law and order adequately discharge their fundamental administrative obligations to the native population.

16. There have been variations in this general pattern in the occasional projects initiated by individual officers and rarely surviving their departure from the area concerned. Internal district or area policy is still apt to change with the staff. The facts are that an overall native policy, extending beyond the techniques of peaceful penetration (which has been done well) has not yet been worked out. By policy I mean here not only the enunciation of objectives, but the laying down of the detailed steps required to attain them. In general, only matters of administration routine - treasury, legal, stores, transport and accommodation matters - are subject to careful scrutiny and explicit direction. As a result, District Commissioners and their staffs, down to the lowliest Patrol Officer on the remotest Police Post, tend to exercise in regard to native policy - i.e. in

those very aspects of administration whose consequences are of farthest reaching importance - what I can only describe as a sort of unenlightened local autonomy. It is autonomy by default, leaving a good deal at the mercy of individual whims and foibles, and of personal antipathies. It is also, against the background of the general post-war native situation - which I do not propose to discuss here - a dangerously inadequate concept of Administration responsibility.

17. Omitting this aspect, the need for consistency, and for a more positive approach, in the treatment of tribal areas, has in any case sharpened with the post-war growth of the technical departments. In the days when these were but embryonic organisations, District Services officials, as the Departmental title indicates, necessarily carried out to the best of their capacities a great many activities of a quasi-technical kind. Much of this agency work still continues, but the increasing strengths of the technical departments in rural areas is resulting in a steady devolution of "district services" within a district to appropriate technical officers. "Native Affairs" are no longer the peculiar province of the District Services official, for Agriculture, Health, Education, Co-operative, Forestry and Police officers, in increasing numbers, are also intimately concerned with the native population.

18. Over the Territory generally, different Departments have concentrated activities in different native areas with little or no regard to overall patterns. Co-operative societies, Rural Progress Societies, official Village Councils, "unofficial" village committees, native church councils and Special Projects present a confused picture whose ultimate form is obscure. It is further blurred by the economic experiments (with social and political implications) being conducted by odd religious and commercial organisations, and by the little politico-economic empires being essayed by individual native leaders. One general trend seems to be that the District Commissioners, whilst their services as co-ordinators and supervisors in native policy matters are needed more urgently than ever before, are in fact assuming more and more the role of disgruntled by-standers morbidly preoccupied with the negative aspects of prestige.

19. It must be borne in mind that the basic reason for the existence of the District Services Department, which has no exact counterpart in a metropolitan country, lies in the fact that the bulk of the Territory's population - the natives - are neither readily identifiable, nor accessible to the central government in the usual ways; nor for the most part are they familiar with government processes, or even aware of the social and economic forces operating on them.

20. The primary task of District Services, as a rural off-shoot of central administration, is to explain, implement and co-ordinate policy as it affects natives; with this, to observe policy effects on groups exhibiting a wide variety of conditions, and to make the day-to-day adjustments required. It is work calling for a high level of non-specialised administrative skill, a sense of perspective, and a sound knowledge of native mentality and the classical colonial problems.

21. All other aspects of District Services functions are clearly subsidiary to this major role of being the agents and regulators of change, for all other aspects are strictly comparable to functions carried out in metropolitan countries by various classes of minor officials, from police magistrates to town clerks and road foremen.

22. It is my personal view that a good many of the difficulties and complaints that have arisen concerning the prestige of D.C.s are due to the fact that most of the D.C.s themselves either do not understand their essential role or lack the means and inclination to carry it out. Much more is required than periodic conferences of departmental representatives, useful though these may be. Moreover, most of the Territory's technical staff are comparative newcomers and do not readily comprehend the administrative significance of what seems to them a non-specialised department with broad but vaguely defined functions. (District Services should not, of course,

be classified as a department at all). Some form of policy-integrating machinery, in which the District Commissioner's role is unequivocally defined, is necessary, particularly in regard to native affairs. The machinery must operate both at central government and at district levels.

23. Closely linked with the need for integrating policy is that of establishing some form of permanent area organisation for putting policy into effect. The number of natives whom an individual field officer can influence directly and constantly, be he patrol officer, medical assistant or agriculturalist, is relatively small. It is impossible to contemplate the Territory ever being able to afford the huge European staff that would be needed to provide adequate coverage. The undesirable results accruing from employing large numbers of (generally "foreign") natives as administrative agents of the Central Government, without a concomitant development of local native institutions to serve as checks and balances, are too well known to warrant comment here.

24. The facts of Melanesian social and political organisation, which in general do not run to hereditary leadership, not only justify an area administrative system derived from Western democratic institutions rather than feudal traditions; they demand it. Further, if contemporary colonial history is any guide, an approach of this sort is the only one capable of meeting both our immediate and long-range requirements.

25. In New Guinea we are slowly recognising the need to keep native customary usages, - particularly in regard to matters such as marriage, land tenure and land usage, inheritance etc. - adapted to the changing needs of an evolving society. The fact that under New Guinea conditions a local authority is the only medium through which this can be done is not yet appreciated. The important role that area authorities must also play in the compilation of accurate vital etc. statistics and in giving direction to native economic advancement, is also far from being clearly established. In District Services circles there is a tendency to relegate all matters pertaining to native economics to the Co-operative Registry, which is primarily concerned with supplies and marketing, not with land usage and cultivation practices. In any given area much economic spadework must be done in conjunction with, and in preparation for, the co-operative movement.

26. Even in its limited application to date, the native local government system has demonstrated that it is capable of fulfilling this need for an integrating and implementing mechanism at native area level. For the first time, it has been possible without inter-departmental friction or unnecessary overlapping, to initiate an integrated policy making for law and order and catering for the local requirements of the different Administrative agencies concerned in native advancement. In doing so it has been possible to enlist the active co-operation of popularly elected local native representatives, and to provide from local resources a substantial proportion of the necessary finance. (1)

27. All this simply amounts to hard-headed practical administration. It is not suggested that any miracles have occurred, or that the "machinery" has as yet evolved beyond fairly crude and simple arrangements. But over the past three years we have proved that the organisation of effort provided for in the Village Councils Ordinance results in systematic progress, that it clarifies District Services' co-ordinating role and makes for consistency in policy. It has been further demonstrated that the official "village" council is the lowest level of grouping population at which area administrative machinery can be made to work efficiently. I do not ask that these opinions be accepted without checking them against the tangible results achieved, and the views of the technical officers concerned. My own

(1) The 1952 Annual Returns "Analysis of Actual Expenditure on Public Services by Native Village Councils" gave a total figure of £13,337 for the Reimber, Vunamami and Rabaul Councils - the only three existing on the Gazelle Peninsula at that time.

assessment of what the status of the local government policy should be is determined by the absence of any alternative methods equally capable of realising our basic aims.

28. At the same time, it is emphasised that the degree of integration achieved has been good only by comparison with non-council areas. It has been far from complete, because, of necessity, it has been effected by working upwards from area level. On the Gazelle Peninsula, the chief testing ground, the generally satisfactory local government relationships evolved between the Health, Education, Agriculture, Forestry and District Services Depts. have been due more to the goodwill and personal qualities of local Departmental representatives than to any standardised arrangements organised at the centre.

29. In other Council areas, such as Milne Bay and Manus, the relationships have varied from those in New Britain councils, and have been less satisfactory from the viewpoint of efficiency. The biggest difficulty with which the local government policy has had to contend has been the lack of adequate machinery for co-ordinating and supervising policy at Central Government level. In the long run, an integrated policy at the bottom is possible only if there is integration at the top.

30. More than 18 months ago I was asked to prepare preliminary drafts of a departmental circular instruction on the Functions and Finances of Native Local Government. The drafts are still unfinished because several basic questions, involving the dovetailing of different internal departmental policies (including Police and Treasury and Lands) with the local government policy, remain unresolved. To date, only the Director of Public Health has precisely stated his views on his department's working arrangements with local government bodies; in Milne Bay at least, they have not been precisely followed by all his officers.

31. There is, in my opinion, an urgent need to reorganise central executive machinery and simultaneously to redefine District Services' essential function as a rural branch of central administration. The first steps should be abolition of the Government Secretary and District Services Departments, the amalgamation of their headquarters staffs into one bureau with a central filing registry, a devolution of responsibility for supervising rural policy to Regional or Provincial Commissioners, and a change of nomenclature of the rural branch to District (or "Regional" or "Provincial") Administration.

32. It is not, however, within the purpose of these comments to discuss the structure of colonial Secretariats. My view is simply that, in the Territory's present condition, a Secretariat-type organisation of Central Administration is required to carry us over the next ten years or so; by that time the increased complexity of Administrative activities will probably necessitate further reorganisation. I think that up-to-date we have been much too prone to follow Australian practices in governmental organisation without sufficiently considering the essential differences between the two situations in constitutional facts and administrative problems.

33. Whatever else the documents under comment disclose, they clearly illustrate the disadvantages of having the Territory's Public Service controlled along lines closely akin to those of the Commonwealth and State services of Australia. Because of the nature of the population and the problems, the executive role of Government in a primitive tropical dependency differs sharply from that in a metropolitan country, and its titular head is in fact its executive head. Of necessity, it is frankly government by bureaucracy (I do not use the term in a derogatory way), with an executive council of departmental heads taking the place of an elected government's cabinet. (The existence of the Legislative Council in no wise affects this basic situation.) It therefore seems to me absurd that control of the Public Service - the executive's instrument - should be removed from the executive by the

introduction of a Public Service Commissioner answerable only to the Minister.

I do not know of any British Colonial Territory where such a situation exists. A usual device is to have a "Chief Establishment Officer" carrying most of the functions vested in the Territory's Public Service Commissioner, but answerable to the Territorial chief executive.

34. The situation is not improved by appointing Commissioners wielding such powers without any background of tropical administration. Simply because of the 'benevolently interfering' role that a colonial Administration must deliberately adopt, problems of functions and personnel arise that never occur in a metropolitan context. Any Commissioner coming in under such circumstances must work under terrific disadvantages. One would not doubt his ability to cope with the 85 percent of his problems that correspond to Australian-type situations. But, by any far-sighted reckoning, the future of New Guinea can vary quite a lot according to the quality of imaginative insight brought to bear on resolving the other fifteen percent.

35. From my incomplete knowledge of the matter, it also seems probable that the practice of staffing the Commonwealth Territories Department with men for the most part experienced in Australian public administration only, has been a potent factor making for rather ill-considered interpretation, at the Canberra end, of New Guinea's needs.⁽¹⁾

36. By contrast, a majority of the executive staff of the British Colonial Office are, at any given time, either retired or seconded members of the Colonial Administrative Service. At this stage in New Guinea's evolution, very few officers of the Territorial service, past or present, have had much experience in diagnosing the classical colonial problems or in handling the administrative techniques that have been evolved elsewhere for meeting them. Whilst a blind application to New Guinea of methods suited to British Tropical Africa would be stupid, it is still true that New Guinea's administrative problems are more closely akin to those of tropical Africa than to those, let us say, of Victoria. I do not know whether the Federal Government has ever made any attempt to obtain the services, if only on loan, of a few senior British Colonial Service men, but I believe such an arrangement could be of immense value at the present time. With this, we should send men abroad.

37. The second big obstacle to "integration" is that, to me at any rate, the actual status of the local government policy is by no means clear. In his statement of July 30th last, arising out of the Raluana incident, His Honour the Administrator re-affirmed that "the local government policy is essentially orthodox general native administration of a more systematic and progressive kind than hitherto practised in this Territory ..." On this it would seem that the policy is not to be regarded primarily as international window-dressing or as a political sop to restless native communities.

38. Todate, however, this ruling has not resulted in the administrative measures required to establish the permanent foundations of the policy; neither does the general attitude of District Service officers towards it appear to have suffered any sea-change. As the situation rests, further progress is well nigh

(1) One slightly ludicrous example germane to this memorandum : In 1950, before the New Guinea service was classified, the Director of District Services endeavoured to have "Local Government Section" substituted for "Native Authorities Section", partly because in British usage, "Native Authorities" connotes a particular form of local government based on hereditary chieftainship. His efforts were unsuccessful, because the pundits considered that "Local Government Officers" would not be able to supervise the Native Courts that, it was said, would accompany the establishment of Native Village Councils.

impossible and the work thusfar done is in jeopardy. I am in emphatic agreement with the Minister's view that future efficient handling of the policy involves rather more than the mere abolition of the Native Authorities Section.

39. The first question requiring unequivocal decision is that of the "voluntary participation" approach. I consider this to be the biggest error made todate in the policy's implementation. Some of its indirect effects have not yet clearly emerged, but it has already caused irreparable damage. More than any other factor it has promoted an impression that a Village Council is basically a sort of political society whose members subscribe to the Government in return for some dubious political concessions. In other words, a political sop. It has played into the hands of various elements, including Missions and a semi-educated native elite, who regard the development of efficient, democratic and Government-supervised area administrative machineries as inimical to their own vested interests. It is resulting in undesirable anomalies in administrative practice which will become more marked as time goes on.

40. Under the present inadequate arrangements for co-ordinating native policy at the centre, some population groups who have refused to join councils i.e. who are unwilling to contribute towards the cost of their own services, are continuing to receive better services than some who are volunteering to contribute. Again, most of the people in a particular area may be required to conform to certain council rules e.g. those governing sanitation and pest control; but a minority, having rejected the council, are not thus bound. Or again, future policy in regard to certain Administration projects being launched on a basis of financial partnership between Central Government and local government units (the New Britain Women's School and the central cacao fermenteries are examples) is quite obscure. Restricting the use of such facilities to people of Council areas would be highly dangerous; it would be also a shelving of our administrative responsibilities. It is difficult to understand why, only in the case of local government, we should be so ready to concede that the native population knows what is good for it.

41. To illustrate the present position:- Let us assume a municipality is declared over certain Sydney suburbs. The residents in some particular streets will have none of it. So they are permitted to go their own way, exempt from rates and by-laws. (Some of them, in fact, have secret by-laws and a rating system of their own, but use the proceeds to buy amenities). The various services provided by the municipal council however - e.g. power, water, sewerage, roads a [sic] swimming baths and garbage collectors - are still extended to the dissenters. The rate-payers continue to view this arrangement with smiling approval. Whilst it is emphasised that the native local government we are discussing is not narrowly comparable with its Australian counterpart, I think the above parable is a fair commentary.

42. The "voluntary participation" approach arose out of misapprehension of the functions of native local government. Its use might have been justifiable against a background of general native taxation (I personally do not think so), but not otherwise. If native village councils are to be regarded in future as integral parts of the Administrative structure, as they must be if the policy is to survive, the "voluntary participation" position is no longer tenable.

43. The second question that must be decided concerns the rate and areas of the local government policy's application. Some careful considerations are involved, for, accepting the role of councils as instruments for implementing an integrated policy designed to raise living standards, the decisions must be based on rather far-sighted assessments of the developmental potentials of different tribal areas. Further, to be sound they must be formulated in consultation with the Health, Education and Agriculture departments. A systematic appraisal of potentials, district by district, and area by area, is required as a preliminary to decisions re future treatment. It is long overdue.

44. There are a number of limiting factors. The most obvious are two previously mentioned : terrain conditions (which connote communications and economic potentials) and population distribution. It is axiomatic that the densest populations are normally found on the best country. (Exceptions to this rule in New Guinea are usually explainable in terms of tribal warfare or disease.) Whatever the ultimate administrative treatment accorded our sparsely populated tracts of swamp and broken mountain country, and the small isolated islands, it is pretty certain that the tempo of advancement of their people must remain slow. The administrative approach to native policy should not be unimaginative, but it must also be geared to what is practicable, and what can be done with limited resources.

45. In terms of the two limiting factors mentioned, conditions over the Territory exhibit such wide variations that any policy of native development must be selective. To pretend otherwise is sheer sentimentalism. But this does not mean that the application of the local government policy must be confined to the few "advanced" areas adjacent to concentrations of European settlement. Contrary to what appears to be a popular belief, a comparatively educated and economically progressive native population is not a prerequisite. Seventy percent of the members of the first Tolai council established (Reimber) were completely illiterate; the Baluan people were definitely not on a cash economy when their council came into being. The policy can be applied, theoretically at any rate, to any controlled area where there are sufficient people and they have an economic potential.

46. I have said "theoretically", because further limiting factors are involved. One of them is the degree of initial financial assistance, in the form of recoverable advances, that the Administration will be prepared to give units whose people are not yet, or only partially, on a cash economy. If the loan money advanced to a unit (whose finances are Administration controlled) can result in that unit's people, within a few years, contributing to the cost of their services as well as repaying the loan, it would seem to be a sound and desirable investment. Thusfar, because of the policy's restricted application, the need for initial loans has not stretched beyond the small amounts required to tide new units over until their tax systems were functioning. This need has not been met. All except one (Hanuabada) of the Councils established todate have been initially financed with money lent by the people themselves. On a broader scale, however, this would not be a practicable method, nor, psychologically, a desirable approach. During the past three years various submissions have been made on this issue. The only tangible result was the Treasurer's loan to Hanuabada Council of £150 at 4½%. Basically this initial financing question is a matter of how the Administration really regards the policy.

47. Two more factors influencing the extension of the native local government policy may not be readily apparent to those who have not carried out local government work in the field. They are

- (a) the local supply situation; and
- (b) the availability of native technical skills.

48. In any projected council area it is much more important to local government officers that these factors be favourable than that there should be, as raw material, the "politically advanced" community⁽¹⁾ with an abundance of clerical skills apparently considered essential by most D.C.s. In practice, the local government system becomes very much a matter of getting things done. Granted that the estimates of each council must be geared to the prevailing tempo of native life in the Council's

(1) The only "politically advanced" native community I have thusfar encountered is the Raluana group, whose leaders have advanced, in the wrong direction. Their political thought could scarcely be regarded as mature.

area, to the Council's financial resources, and to the availability of the Administration staff required to supervise their implementation, it is imperative that there be, year by year, some material achievement of a durable sort. Social services installations are obvious priorities. The current practice of building a fairly expensive permanent council house first is partly a matter of convenience, mostly a matter of psychology.

49. Under the local government system aspirations for native advancement break down to a series of concrete jobs. The jobs are defined in the works programme set out in annual council estimates. They call for a regular flow of diverse building etc. materials, and for the technical skills to use those materials. Maintaining essential supplies, in the New Guinea context, requires foresight, constant alertness and some ability to buy wisely. It provides excellent training in the economics of public administration. To date it has been probably the most time-consuming activity of officers engaged in local government work. Ignorance of commerce, and race relations difficulties, will prevent even the more advanced Councils from acquiring much expertness in this field for many years. In areas where poor communications preclude any regularity in supplies (Baluan is one) the work is that much more difficult.

50. Organising essential native technical skills - carpenters, plumbers, mechanics, medical, hygiene and agricultural instructors and school teachers (who are really technicians) - presents more difficult problems than the supply question. Without such skills at its disposal a council can accomplish very little in raising living standards. Their present availability is limited. Even on the Gazelle Peninsula, where a good technical school existed in pre-war days, the demand for native artisans exceeds the supply.

51. In this tradesman field, councils are also in competition both with the expanding needs of Central Government and with commercial concerns. The Territory's current facilities for technical training are, by any forward reckoning, inadequate; and the intake of trainees, on an area basis, is unbalanced. It is easier to criticise, however, than to offer immediate solutions; in fact, - simply because it takes years to learn a trade - there are no quick answers.

52. The position regarding medical and hygiene assistants is, in short-range terms, somewhat better than in regard to carpenters and plumbers. The position re agricultural instructors is very much worse: the requisite training school has not yet been established.

53. The point I wish to emphasise is that, in an area otherwise favourable for its introduction, a complete dearth of technical skills could effectively prevent the local government system from achieving much more than lop-sided political developments. Administratively a council could then be little more than an agency for maintaining law and order. The extent to which deficiencies in particular areas could be made up by importing tradesmen from other districts is very limited. Most native tradesmen can find all the work they desire in their home areas. Employing non-native technicians on the scale required would be beyond the resources of native councils, even if it were administratively desirable; the unofficial motto of the local government system must be "Helping natives to help themselves".

54. I have purposely omitted clerical skills as a factor, firstly because lack of them in a particular area has been over-emphasised as a reason for not applying the local government policy, and secondly because, given a few months advance warning, I think the demand for Council clerks can be kept satisfied. (Whether a balance is being maintained between technical and non-technical education is something for the Education Department to consider. It is of vital importance that it be maintained.) On experience, it is not necessary, nor even altogether desirable, that Council clerks should be local men, and as a class they are, like teachers, not markedly adverse to migrating.

55. The final limiting factor is the effectiveness of administrative arrangements for establishing councils and supervising their operation. The need for improved central government machinery to co-ordinate local government policy at top level was mentioned above. It now remains to consider the subordinate machinery by which the centre's decisions are implemented.

56. On performance, the methods evolved to date are not good enough. On this point everyone is agreed. But, as the Minister has indicated, the causes for this weakness have been over-simplified; the disadvantages of the special section technique have been assessed mainly in terms of its alleged bad effects on existing district organisation. The fact that it is also, in terms of administrative objectives, an inadequate technique, has been overlooked.

57. In the three years that have elapsed since the local government policy was actually launched (Sept. 1950), some 36,000 natives in four different districts have been brought under Councils. Providing this rate of progress is maintained, the present known native population of the Territory (about 1,300,000) could be all organised under councils - theoretically at any rate - in 105 years from now. If my evaluation of councils, as area mechanisms required to raise living standards, is accepted at all, this rate seems too slow.

58. The Native Authorities Section was conceived by Mr J.H. Jones as the best means available of getting the local government policy started. He once told me that he had silenced District Commissioners' objections to the idea by asking them what they knew about the policy. As one who has had frequent occasion to criticise the separate section arrangement, I wish to state that I still consider the Director's reasons to have been valid at that time. There was an obvious need - which exists yet - for the detailed adaptation of the local government system to New Guinea conditions to be worked out by officers who could devote all their energy to the problems. The idea, as I understood it, was that once sufficient testing had been done the way would be clear for general application of the policy. My own initial misgivings regarding this arrangement related mainly to difficulties that would arise from the Section's nomenclature. The fears have been justified; the hopes have not materialised.

59. Many of the difficulties that have occurred since stem from the failure to follow up the pioneering work with measures making for the application of its results as a normal routine by Field Staff generally. The Gazelle Peninsula was selected as the chief testing ground and the Senior Native Authorities Officer (at that time A/A.D.O.) was posted there. After three councils had been set up the Acting Director of District Services (Mr I.F. Champion) gave approval (DS.14.3.23 of 12/6/51) for the remainder of the Tolai area to be brought under the policy. The existence of organised anti-local government influences first became apparent in September 1951. Our failure to handle these has left the work unfinished and has high-lighted the number of basic issues that remain undecided.

60. Meanwhile three more small councils had been established in other districts by order of the then Administrator. One of these areas (Baluan) had become a political pressure point unresponsive to the usual treatment; at Milne Bay also, the formation of the Ealeba Council was primarily an attempt to rectify an unsatisfactory native situation. Insofar as it has achieved its immediate purpose the Baluan Council may be regarded as highly successful. It is too small to be financially stable, however, and its expansion depends on the decisions yet to be made in regard to the policy generally.

61. The Hanuabada Council is essentially urban in character. This, and the need for its ultimate integration with a Port Moresby township authority presents a set of problems materially different from those facing the rural-type units. They have yet to be studied in detail.

62. That is the extent of the policy's progress since the Native Village Councils Ordinance was proclaimed in December, 1949.

63. Extension of the policy has been left entirely to the discretion of District Commissioners. In the terms of Circular Instruction 141 (Para 5) : "No firm decision has been made as to the tempo with which councils will be instituted. It is expected, however, that District Commissioners, in consultation with Native Authorities Officers within districts, will, on the basis of their assessments of local native situations, submit periodic recommendations in this regard to the Director."

64. Theoretically this would seem to be an admirable arrangement. Unfortunately, however, it presupposed District Commissioners understanding the policy and being favourably inclined to it. With one or two exceptions, the facts are precisely the reverse of this. For all the talk over the past few years, Field staff generally still seem unable to realise that the establishment of Native Village Councils does not imply any premature devolution of political, financial, executive, legislative or judicial autonomy to a council's members. Under the legislation, all these - excepting the last, which is not provided for at all - are ultimately controlled by the District Commissioner, and a council area is every bit as much his administrative responsibility as any other part of his district. Perhaps there is some realisation that, initially at any rate, the local government policy does not mean less work, but more, for its application entails regular and systematic attention to all aspects of native life that concern the Administration.

65. So far as I am aware, outside of New Britain only one District Commissioner (Mr. Atkinson of Gulf Division) has recommended that councils be established within part of his district - providing a Native Authorities Officer could be posted there, to investigate matters.

66. The few assessments of local government possibilities that have been made by other District Commissioners have been in the nature of responses to what presumably seemed to be a looming threat. Thus the former District Commissioner of Madang, in his quarterly report of March 31, 1953:- "Unofficial councils functioning in this district still do good work. I do not consider that the time is propitious for the establishment of Councils under the Native Authorities Ordinance" (sic).

67. Or again, the District Commissioner Wewak, in a memorandum of 12/1/53, stated that "natives generally appear to be keen for the inauguration of councils but few if any of them have any idea what is entailed." He went on to doubt the advisability of establishing local government in the Sepik District "until a sufficient number of educationally advanced natives of required standard are available ... I feel that the establishment of Local Government Authority (sic) in any part of the Sepik District would be premature. Such a step would lead to confusion."

68. The District Commissioner, Lae, has made no secret of his opposition to the local government policy, and has expressed the view that developments of this nature should be left to the Missions. None of these officers has seen a native village council working. It is extremely doubtful whether they - and most of the other District Commissioners and Assistant District Officers - could at present answer a simple questionnaire on the policy, or prepare a set of local government estimates. A D.C. in Papua who complained that he could not understand the layout of Capital Expenditure in some council estimates added crushingly that in any case he would prefer to be occupied on detailed Administration estimates for his district. It was pointed out to him that any comprehensive system of district estimates would also involve him in the perplexities of differentiating between "Reappropriations", "Further Appropriations on Account" and "New Works".

69. It may be mentioned in passing that the widespread idea that "unofficial" councils (or "kivungs") have any particular value in preparing natives for councils constituted under the N.V.C.O., is, on Gazelle Peninsula experience, quite fallacious. Originally intended as advisory bodies to Field Staff, their inevitable metamorphosis either into sterile debating societies or irregular bodies exercising illegal judicial etc. functions, actually tends to make subsequent local government promotion more difficult.

70. At bottom the trouble has lain in faulty appreciation by Headquarters of the local government policy's character and implications. As the system has unfolded headquarters has become progressively more uneasy. As Senior Native Authorities Officer a considerable amount of my time has been occupied in seeking clarification of policy on a diversity of issues impinging on local government - and in the process, necessarily pointing out where existing arrangements were inadequate.⁽¹⁾ Perusal of the files will show the degree to which such matters, right from the beginning, have featured in correspondence, and the lack of positive direction regarding them. Nearly every major aspect of the policy, commencing with the vital issue of how Council areas were to be described in proclamations (the C.L.O's. original ruling was finally overturned by Judge Phillips) has had to be argued. I have always felt that the onus of scrutinising overall policy in its relation to a changing native society - which is what the business has amounted to - should not have to rest on me. It is emphasised that, far from setting myself up as a self-proclaimed expert, I am painfully aware of plodding and feeling my way with little or no support. (In certain aspects of the fairly elementary financial procedures evolved, my wife's help has been invaluable.) The general approach has been wary, and I am sanguine enough to believe that so far, there have been no major errors in the policy's internal workings. But it has all added up to the most thankless assignment I have yet undertaken.

71. The papers forwarded with the Minister's Minute indicate strongly that both the Public Service Commissioner and the Acting Director really regard the local government policy as a fancy superstructure rather than a comprehensive system of administration. In both their memoranda reference is made to the limitations imposed on the general usefulness of Native Authorities Officers by reason of their being "restricted to the implementation of one ordinance". Even assuming that this in fact has been the case, the Native Village Councils Ordinance is essentially an enabling ordinance, not a fiat relating to a few specific acts.

72. The scope of activities covered in the key sections 10, 11, 12, 19 and 20 adds up to a much more comprehensive and complex pattern of administration than pertains in non-council areas. All these sections have been implemented in implementing the policy. There is no aspect of controlled-area administration that has not been carried out by Native Authorities officers in the course of their duties, which, however, have included a great many activities not performed by ordinary Field Staff.

73. Accordingly, far from regarding themselves as specialists, Native Authorities Officers justifiably consider that they are the only Field Staff who

(1) A good illustration is the uncertainty and procrastination regarding a Native Courts Ordinance, which has been considered intermittently since 1946. The local government system, which trains natives to work according to the rule of law, urgently calls for this legislation - not so much as a forward step but as the only feasible means of regularising the chaotic growth of unsupervised and highly illegal native tribunals that have evolved all over the Territory and, in my opinion, deal with anything up to 90% of all criminal and civil issues that arise. In council areas it has been possible to put the brake on, but not to eliminate, this trend. In other areas our virtual conniving at it is making a mockery of the Administration's fundamental duty of maintaining law and order.

are not specialising - whose duties are not confined to the performances of such fairly elementary administration tasks as law and order, census compilation, labour matters, stores, finance, accommodation, transport, licences and township affairs. All the officers in the section have had experience of "ordinary" District Services work. Each of them has commented that, until he embarked on native local government work, he had no idea that administration had "so much to it". The financial emphasis given to administration by the annual estimates system, and the attention to detail enforced by the necessity of carrying out works programmes on small and inelastic budgets turns Native Authorities Officers into starkly practical administrators. The jesting remark of Council President Nason Tokiala, that "you can tell Native Authorities Officers from most other 'kiaps' because they have corns on their hands instead of elsewhere", is not without an element of truth.

74. Moreover, since they currently spend a far greater proportion of their time on field work than most patrol officers, it has been somewhat galling to Section members to learn that their status as Field Staff has been in doubt.

75. These points were submitted to the Public Service Commissioner in memoranda DS.14/11/6/29 "Classification of position of S.N.A.O." of 4/11/52, and "Status of Native Authorities Officers" of 27/1/53, which were never acknowledged. Judging by the attached PSC memo. A5/2/9 of 1/8/53, Mr Head does not seem to have considered them.

76. Of the four criticisms of the section system listed by the Minister in Para. 5 of his Minute, only two ((a) and (c)) in my opinion, are valid so far as local government work is concerned.

77. It is agreed that on the basis of present arrangements and attitudes Native Authorities work is apt to be "a deadend job" (although I was "drafted" into this work I have been myself superseded in Field Staff ranking by at least two officers junior to me in service and with lower qualifications). It is further agreed that there is apt to be loss of flexibility in the management of staff (it must be admitted that this factor has not been particularly apparent in New Britain).

78. In regard to point (b), it has been already stated above that, so far as local government work is concerned, the "broader experience" allegedly gained by other Field Staff is mythical. I do not subscribe to the commonly held District Services view that a Field officer is widely experienced and generally competent simply because he has spent a large number of years carrying out a limited number of repetitive tasks. (By this criterion a veteran Able Seaman must be an expert navigator, and is qualified to be an Admiral. They are all sailors). It would, I think, be more accurate to say that, as handled todate, the section system militates against the generality of Field Staff gaining a broader perspective of their administrative responsibilities. So long as the onus for implementing the local government policy rests on a few officers with special labels, District Services officers in general will tend to regard the policy as none of their business.

79. As regards point (d) - that a specialist section loses the value of the guidance and control of the District Commissioner - : I would be more inclined to agree with the 'guidance' argument if my experience had indicated that the majority of District Commissioners were at present qualified and willing to direct the work. Attitudes apart, I tender it as an observed fact - the underlying causes are not quite clear but are probably explainable in terms of previous conditioning - that until a District Services officer has had first-hand experience of the local government system he cannot really comprehend it.

80. As regards 'control', - it is completely in the District Commissioners' hands now. The Council Regulations vest control of all local government affairs - excepting one or two matters reserved to the Director - in the officer administering

the district or his authorised representative. (I might add that these Regulations were mainly my drafting). The only bar to District Commissioners exercising effective control is their own ignorance of, and lack of interest in, the policy. From the average District Commissioner's viewpoint, the real objection to "specialist sections" is that they break the long tradition of local autonomy in native policy matters.

81. The present District Commissioner, New Britain, is the only senior officer of the Department who has had first-hand experience of the workings of the local government policy on any significant scale, and he also appears to be the only senior officer who unreservedly believes in its intrinsic value as an administrative mechanism. Because he has actively supported it he is thought to have allowed a "specialist officer" (myself) to "usurp" his authority. This is pure rationalisation. I do not think the District Commissioner (Mr. McCarthy) is commonly regarded as a man temperamentally fitted to accept such a situation with equanimity. It therefore seems rather odd that he and the truculent S.N.A.O. (described - probably accurately - in the Roberts Report on Raluana affairs of November 1951 as having "firm views verging on egotism"), should have been able to work in harmony for almost four years.

82. There has been no important aspect of native local government work as it affected New Britain on which the District Commissioner Rabaul has not been fully informed, and in which he has not taken an active interest. This has not been the case with every District Commissioner who has served since 1950 in the other three districts where the policy has been applied in a small way.

83. I have not seen the report of the Roberts Commission of June 1953, and would be interested to learn what facts were adduced to support the widely publicised finding that an "incorrect and undefined official relationship" between the D.C. and S.N.A.O. was a contributory factor in the Raluana situation. Neither the D.C. nor myself is aware that any such state of affairs existed.

84. It is noted that the action of the Public Service Commissioner in making this finding a principal cause of what was a riot with serious implications, has been criticised by the Minister. The sequence of events, and the various memoranda on file DS.14/11/6, dating back to 1951, including that of the D.C. dated 23/2/53, surely prove conclusively that the official relationship existing between the D.C. and S.N.A.O. was not a factor at all. On the other hand, the acts and attitudes of certain other officers of the Administration, - particularly the former Superintendent of Police, Rabaul, and the former A.D.O. Kokopo, could have been - and of course may have been - included as quite potent influences.

85. The Raluana situation has evolved quite logically from the impingement of a government policy, regarding which the Government had not made up its mind, on a semi-educated population group whose leaders, at least, knew what they wanted. I claim no credit for having, in advance, recognised the situation for what it is (reference confidential memo. of 9/9/51 (unacknowledged) and personal letter to Mr. J.H. Jones of 28/10/51 (unacknowledged)). I think it deplorable that an issue with implications so grave should have been obscured by personality considerations, and that, in consequence, the situation should have been left unresolved. Sooner or later firm administrative action will be required at Raluana, and the longer the delay, the firmer the action will have to be.

86. In District Services circles personality factors have loomed dangerously large. As the officer immediately responsible for implementing the local government policy I have frequently felt rather like a myopic forward scout whose platoon commander, without recalling him, has decided not to advance.

87. With this I have come to feel that forward scouting is not a very rewarding occupation. I did not apply for the job of S.N.A.O. I was appointed.

In the reclassification of the Public Service it was marked down from the D.O.II status originally recommended by the Director to D.O.I status. When the reclassification was finally promulgated I was not listed as S.N.A.O., - although I had filled that post in an acting capacity for nearly two years - but as N.A.O. (equivalent to A.D.O.). On enquiry the Director informed me that this was because the S.N.A.O. post had not been advertised; but neither had the N.A.O. posts, two of which Messrs. Landman and Plant also had been appointed without applying. After protesting, I was "promoted" some weeks later, without the position having been advertised, on the grounds that "there is no-one other than yourself with the necessary qualifications for the job of Senior Native Authorities Officer". (Letter by Mr. J.H. Jones, of 8/1/52).

88. The D.O.I gradings were later abolished, but my D.O.I salary range was not adjusted, presumably because I was not regarded as a Field Staff officer. I have not yet been rejected - so far as I know - as inefficient, and on seniority, qualifications and experience (for all the fortuitous bar in the P.S. Regulations against my being an A.D.O.) I think I compare favourably with officers who have been since appointed as D.C.s.

89. The current proposal to change the S.N.A.O. title to that of "Administrative Officer" (in the New Guinea context a clerical appointment inferior in status to that of D.C.) will achieve nothing towards clarifying the Field Staff status of the appointee. It will, in fact, make for more confusion, for the S.N.A.O. job is essentially a field job. Meanwhile Messrs. Landman and Plant, as confirmed N.A.O.s, are clearly entitled (under the same Public Service Regulations whose literal interpretation has been invoked against me) to be classified as confirmed A.D.O.s. Instead, their substantive ranking has been arbitrarily reduced to that of Patrol Officer.

90. I have inserted this note of personal complaint into these comments with reluctance, but it seemed a detail essential to the filling in of the general picture.

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91. An attempt has been made in the above paragraphs to show that a number of decisions vital to the local government policy's future have yet to be reached. Some at least of these decisions, by their very nature, cannot be formulated without first rectifying what, in my opinion, are serious weaknesses in the general administrative structure. It is beyond my scope to do more than indicate - as I have tried to do - where I think those weaknesses lie. Unless they can be rectified, however, the local government policy, amongst other issues, will continue to be in difficulties, irrespective of what internal District Services arrangements are made for implementing it.

92. Assuming, however, that some general reorganisation is to be effected, my views on the concomitant District Services (or Provincial Administration) arrangements required are:-

- (I) A grouping of districts into three provinces or regions, under Provincial (or Regional) Commissioners (posts to be created) in order (having regard here to native policy aspects only) to:-
 - (a) decentralise routine high-level tasks involved in administrative control (Provincial Commissioners would not participate in ordinary district administration) thereby allowing Headquarters the time to scrutinise and collate policy effects over the Territory, and to plan ahead. (The amount of Headquarter's time consumed in reading routine patrol reports and working out staff postings is adequate argument).

- (b) To ensure that policy instructions regarding the treatment decided for different areas are carried out with consistency;
 - (c) To scrutinise local government estimates and to ensure that pre-determined emphases are maintained.
- (II) The Provincial Commissioners and at least one Senior Headquarters officer should be required to make a close study of the local government system and its problems and preferably should be sent abroad to study developments in this sphere overseas.
- (III) All District Commissioners, under promise of disciplinary action, should:
- (a) be required to familiarise themselves with the local government system;
 - (b) be given specific instructions regarding its implementation in pre-determined areas of their districts; and
 - (c) be required to carry out the work of establishing the first councils in their districts personally.

Note: The long history of local autonomy, combined with a somewhat cynical attitude by Field Staff - not altogether unwarranted - towards Administrative Instructions, would probably necessitate some firm action at the beginning.

- (IV) The Native Authorities Section, as a separate entity with distinctively-titled officers, should be abolished;
- (V) A group of Field Staff officers, interchangeable, as desired, with other Field Staff by internal departmental process, should be employed under the direction of Provincial Commissioners to:-
- (a) Test out aspects of the system as yet little developed or untried (e.g. the Native Courts) and, (in consultation, where desirable, with the Anthropologist) study particular problems in the field; ⁽¹⁾
 - (b) Apply the policy in particular difficult or atypical areas, as directed by Headquarters;
 - (c) Organise and supervise training courses for native council members and council employees; (the basic machinery for this already exists);
 - (d) Organise the bulk buying and distribution, on a district or even provincial basis, of the large quantities of building materials and variegated supplies that will be regularly required by local government bodies;
 - (e) Assist D.C.s and their staffs, as required by Provincial Commissioners, on local government financial matters, and, under instructions, to conduct audits of local government books. (With a large number of councils, no other audit method seems practicable).
- (VI) If the local government policy spreads, an establishment of "District Foremen" will be needed. Reference has been made above

(1) To obviate any possible misinterpretation of where I think my present position (and myself) should fit into the pattern, I should state that my personal interests lie in this direction. I have no long-range ambitions within the Service.

to the heavy demands on officers' time occasioned by the organising of supplies, and the supervision of buildings, wells, etc. under construction. Once the policy develops widely, these duties could be carried out more efficiently and economically by suitable tradesmen. Whether they should be employed by Central Government or by the local authorities is not strictly relevant here. The Tolai councils are already employing one or two native tradesmen as "works supervisors", but with a larger scale of operations it is probable that non-native District Foremen would be needed - at least for many years to come.

- (VII) A Native Courts Adviser would be also needed if or when the native courts system developed. Beyond mentioning the future need, there is little point in discussing this position further at this stage.

93. It may be argued that existing commitments and the general staffing situation makes reorganisation, along the lines indicated above, impracticable. To this one can only reply that, sooner or later, it must be made practicable. The pattern outlined above is, by overseas standards, pretty orthodox. Its general lines have been evolved in other Territories after much trial and error, and should not be lightly rejected unless we have better substitutes. At the present time our ratio of District Services Field Staff to native population is more than four times that of any British African Territory for which I have extracted figures. Such comparisons mean little without reference to geography, communications and population distribution, but I think two points are indicated:-

- (a) On comparative performance, the calibre of our service seems low; and
- (b) there has been a tendency to post officers to areas for the sake of having someone there, and without sufficient regard to what they do.

94. It is probable that these comments will please nobody. Their compilation has certainly given me no pleasure. In making them I have deliberately taken a wide sweep. My purpose was to emphasise a strong conviction that in colonial administration even more so than in other spheres of public administration, it is imperative to know clearly just where we want to go, and how we propose getting there. It is equally essential to be able to recognise facts, including the uncomfortable ones. I have no consciousness that these comments go beyond what was required, because I think of native policy as the end link of a chain stretching back through every sphere of administrative endeavour. In a final analysis, unless that end link is sound, the others are purposeless.

D.M. FIENBERG
SENIOR NATIVE AUTHORITIES OFFICER

Appendix IV

The Report of the No. 6 Senior Officers' Course on Community Development

During the 1950s the office of the Niugini Public Service Commissioner, on direction from the Minister for External Territories, Mr Paul Hasluck, organised a number of month-long seminar type courses for groups of senior officers of the Niugini Administration. The courses were held at the Australian School of Pacific Administration, Mosman, New South Wales. The number of officers on each course was usually less than 20 and the course members selected were generally of chief of division level or of equivalent seniority. Each course concentrated on a set theme and heard papers delivered by visiting consultants. Course members worked in syndicates in preparing the course report. The No. 6 Senior Officers' Course on Community Development was held during October-November 1961. It was attended by 15 Australian and 2 local officers. These 17 people included representatives from the Departments of the Administrator, of Health, Education, Agriculture, Information and Extension Services, Native Affairs and the Co-Operative Registry. This No. 6 Course marked the first occasion on which virtually all members of a senior officers' course had a direct official interest in the course topic.

Partly for this reason, the No. 6 Course report was a more searching and critical appraisal of Australian policy and practice in Niugini than any of the documents produced by the previous five courses. The No. 6 Course also made more than 50 recommendations, including the re-raising of proposals that the Minister himself either directly or implicitly had previously rejected. Thus, one of the recommendations emphasised the need for the Central Policy and Planning Committee to be serviced by carefully selected officers who, amongst other duties, would have responsibilities in policy integration and evaluation, i.e. the recommendation emphasised that policy co-ordination for Niugini should commence at central headquarters level. Another recommendation which was contrary to Hasluck's expressed views was that the Departments of the Administrator and of Native Affairs should be merged. Yet another was that native local government councils should be utilised as fully as possible as media for comprehensive community development. With this, the Course considered that a separate department of community development was not required at that time.

Either by chance or cunning calculation an advance copy of the No. 6 Course report was made available to a senior educationalist from New South Wales who had been conducting a seminar in Port Moresby after delivering the Camilla Wedgwood Memorial Lecture. It was customary for the visiting dignitary in this situation to submit a personal report direct to the Minister for Territories. The New South Wales official, blissfully ignorant of the implications, made particular reference to this No. 6 report in his document, and recommended that it should be studied as a basis for future policy. This resulted in the Minister for Territories reading the report rather sooner than he might otherwise have done, and provoked an exceedingly lengthy and irascible Ministerial Minute. Hasluck criticised the report's "language and format", its "constant tendency to stray", its "school teacher's jargon" and its "woolly use of words". Overnight a report of a sort that was rarely read by anyone became a nine-day wonder. Perhaps I should say that the No. 6 Course itself suspected at the time that its report would probably not please the Minister. In fact at the concluding session, one member, Fred Kaad, solemnly averred that he felt he had had the honour of attending the last senior officers' course that would be held.

Nevertheless, No. 6 Course members, who after returning to the Territory had dispersed to their different posts, were mildly surprised to learn that the Minister had not only expressed his displeasure at their poor report, but had issued directions that "semi-verbatim" records were to be kept of future senior officers' course proceedings, and that after each course was finished a special committee from Canberra would come to the Territory, interview the course participants, and "correct and revise" the report. These extraordinary instructions were never implemented. There was only one more Senior Officers' Course - in 1963 at the end of Hasluck's term as Minister.

D.M.F.

Appendix V

Memorandum: Assessors for Courts for Native Affairs
and Native Matters

D r a f t

[17/3/1959]

The Secretary for Law,
KONEDOBU.

... ..

7. First of all, I take it that the proposal for Native Courts to exercise jurisdiction, inter alia, over matters arising out of custom has been finally dropped, irrespective of any native or U.N. Mission pressure.

8. It seems to me that we have a number of distinct problems to overcome:-

- (a) to bring the people more closely into the operation of the Territory Court system, at a level at which they can make a contribution;
- (b) to improve the administration of justice in relation to native custom, by formally incorporating in the Court structure natives who may be expert in such matters;
- (c) to develop full native participation in Court work by evolving native magistrates.

9. My belief is that the problem is twofold - firstly, to formalise the "assessor" system, using village natives, which has proved successful in the past; and, secondly, to create a "career" native magisterial service - initially at least in Courts for Native Matters.

10. To implement the first proposal, I suggest the inclusion in the Native Regulation Ordinance and the Native Administration Ordinance (or better, in the uniform Ordinance, to which I shall refer later) of a provision along the following lines:-

"(1) A Magistrate (for Native Matters) -

- (a) shall, in any case involving a matter of native custom; and
- (b) may, in any case in which he considers that it will be of assistance,

appoint one or more natives to act as assessors on the case.

- (2) Natives appointed as assessors shall be selected on the basis of knowledge of local native custom, disinterest and standing in the native community.
- (3) An assessor shall, for the purposes of the matter in respect of which he is appointed, have all the powers of a Magistrate, except that he shall not vote upon or give any decision in the matter.
- (4) A Magistrate is not bound to accept the opinion of an assessor on any matter, but where his decision on a matter involves his refusal to accept an assessor's opinion on native custom, he shall report in writing to the Secretary for Law the circumstances and his reasons therefor."

11. The above is not intended as a draft in the technical sense, but as a working paper.

12. Properly administered, this should immediately make for greater native participation in the functioning of Courts and would, to some extent at least, meet the objections raised by the Presidents of the four Tolai Councils.

13. The second part of the solution which I suggest is for the training of natives to act as Magistrates for Native Matters in their own right.

14. Briefly, my idea involves the progressive training of selected natives through the Auxiliary Division (where a general education will receive emphasis), through the Third Division (for more intensive technical training) to a Second Division position as Magistrate for Native Matters. In my view, no great emphasis should be laid, at the initial stages, on academic qualifications above those normally required of an Auxiliary Division officer.

... ..

[15(d)] Graduation, then, would involve:-

- (i) the completion of a fixed number of years as an Associate to the Magistrate (say, five years);
- (ii) the successful passing of the necessary examinations, both written and practical (the "moot" again);
- (iii) certification by the Magistrate concerned as to the trainee's personal qualifications.

(e) "Post-graduate" Training

Following graduation, I would suggest that there should be a further period during which the new Magistrate would sit only with another Magistrate, to whom he would be junior (here again, a minor amendment to the Native Regulation Ordinance and the Native Administration Ordinance is involved, to provide for a casting vote). Finally, there should be provision for a short (6-12 months) course at A.S.O.P.A. for more advanced training, together with refresher courses in Port Moresby. Necessarily, the Courts Adviser will have to give the new Magistrates a good deal of personal attention.

(f) Salary

In order to attract, and hold, the right type of applicant, salaries in both Third and Second Division positions will have to err on the generous side.

(g) Further Advancement

It should always be made possible for Magistrates for Native Matters, after experience and perhaps an A.S.O.P.A. "long course" to take up positions roughly equivalent to those of a "District Officer (Magisterial)"; and the necessary positions created. This possibility should be clearly held out as an extra incentive.

... ..

(C.J. Lynch)

Assistant Secretary (Drafting)

Appendix VI

TERRITORY OF PAPUA AND NEW GUINEA

A B I L L

for

A N O R D I N A N C E

To provide for Native Local Courts, their Jurisdiction, Practice and Procedure and for other purposes.

BE it ordained by the Legislative Council for the Territory of Papua and New Guinea, in pursuance of the powers conferred by the Papua and New Guinea Act 1949-1954, as follows:-

- Short title. 1. This Ordinance may be cited as the Native Local Courts Ordinance 1954.
- Commencement. 2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the Gazette.
- Definitions. 3. In this Ordinance, unless the contrary intention appears -
"authorised officer" means the Native Courts Adviser or an officer appointed under Section 5 of this Ordinance;
"Court" means a Native Local Court established under this Ordinance;
"court of inferior jurisdiction" means -
(a) in the Territory of Papua, a Court of Petty Sessions, Small Debts Court or Court for Native Matters; and
(b) in the Territory of New Guinea, a District Court or Court for Native Affairs;
"land" includes a reef or bank and a house or other structure built on or over water;
"native custom" includes, in relation to a Court, native custom as declared or altered by rules made under Section 12 of the Native Local Government Councils Ordinance 1949-1954 by a Native Local Government Council having jurisdiction in the area or part of the area in and for which the Court is established;
"party" includes a complainant or defendant;
"proceedings" includes both civil and criminal proceedings;
"the Director" means the Director of District Services and Native Affairs;
"the District Commissioner" means, in relation to a Court, the District Commissioner administering the District in which is situated the area in and for which the Court is established;
"the Native Courts Adviser" means the Native Courts Adviser appointed under the next succeeding section;
"the Regulations" means the regulations made under this Ordinance;
"this Ordinance" includes the Regulations.

- Native Courts Adviser. 4.--(1) The Administrator may, by notice in the Gazette, appoint an officer to be the Native Courts Adviser.
(2) The qualifications for appointment as a Native Courts Adviser are as prescribed.
(3) The Native Courts Adviser shall have and perform such powers, duties and functions as are prescribed.
- Authorized officers. 5. The Administrator may, by notice in the Gazette, appoint officers to be authorized officers for the purposes of this Ordinance.
- Native Local Courts. 6.--(1) The Administrator may, by proclamation, establish a Native Local Court in and for the area specified in the proclamation.
(2) The Administrator may, by notice in the Gazette, appoint a native to be a member of a Court.
- Constitution of Courts. 7.--(1) Subject to this section, the Regulations may prescribe, in respect of a Court or class of Courts -
(a) the number and qualifications of members of a Court;
(b) the manner of selection of the members of a Court;
(c) the respective seniority of members of a Court;
(d) the manner of appointment, duties, powers and functions of the President of a Court;
(e) the remuneration of members of a Court; and
(f) the offices, duties, qualifications, remuneration, manner of selection and appointment of the non-judicial officers of a Court.
(2) Notwithstanding anything in the last preceding subsection contained, the Administrator may, in a proclamation under the last preceding section, or in a separate proclamation, specify, in relation to a particular Court, all or any of the matters referred to in the last preceding subsection, and thereupon, in respect of matters specified in the proclamation, regulations made in pursuance of the last preceding subsection do not apply to the Court or class to which the proclamation relates.
- Suspension and dismissal of members. 8.--(1) The Administrator may dismiss or suspend and a District Officer or an authorised officer may suspend a member of a Court who appears to him to have abused his powers or to be incapable of exercising his powers justly, or to be unworthy to be a member of a Court or for such other reason as to the Administrator or the District Officer or authorised officer, as the case may be, seems fit, but where a District Officer, other than the Director or the District Commissioner, or an authorized officer suspends a member under this subsection, he shall immediately report the fact and his reasons to the District Commissioner who shall confirm, vary or revoke the suspension and shall refer the matter to the Administrator.
(2) Upon the dismissal or suspension of a member of a Court under the last preceding subsection, he ceases to be qualified to exercise any of the powers and functions of a member of a Court -
(a) in the case of dismissal, from the date of dismissal; and
(b) in the case of suspension, from the date and for the period of suspension.
- Sessions of Courts. 9. Subject to the Regulations, a Court shall sit at such times and places as are necessary for the convenient and speedy

despatch of the business of the Court or as are directed by a District Officer or authorized officer.

Disqualification of member by interest.

10. A member of a Court shall not adjudicate upon a matter as to which he has any pecuniary or personal interest.

Jurisdiction.

11.-(1) Subject to this Ordinance, a Court has jurisdiction only over causes and matters civil and criminal in which all the parties are natives.

(2) When in the course of any proceedings in a Court a person claims that he is not subject to the jurisdiction of the Court by reason of the fact that he is not a native, the Court shall refer the matter to a District Officer or authorized officer who, after making such enquiries as he considers necessary, shall decide whether or not that person is a native and shall forward to the Court a certificate accordingly.

(3) Except for the purposes of an appeal under Section 24 of this Ordinance, a certificate under the last preceding subsection is, for the purposes of the proceedings in respect of which it was given, conclusive evidence of the fact stated therein.

(4) Subject to this Ordinance, a Court has jurisdiction over -

- (a) such criminal matters as are prescribed;
- (b) such civil matters as are prescribed;
- (c) questions of such rights to or in relation to native land, other than native land registered under the Native Land Registration Ordinances 1952, as are based solely on and regulated solely by native custom;
- (d) all matters arising solely out of and regulated solely by native custom, insofar as that custom is not repugnant to natural justice or morality and is not in principle in conflict with any law in force in the Territory or a part of the Territory;
- (e) contraventions of or failures to comply with a rule made under Section 12 of the Native Local Government Councils Ordinance 1949-1954 by a Native Local Government Council having jurisdiction in the area or part of the area in and for which the Court is established; and
- (f) contraventions of or failure to comply with an Ordinance which the Court is authorized to administer or enforce under the next succeeding subsection.

(5) The Administrator may, in the proclamation establishing a Court or in a subsequent proclamation, confer jurisdiction upon the Court to administer or enforce all or any of the provisions of a specified Ordinance, subject to any restrictions or limitations imposed by the proclamation.

Limitations on jurisdiction.

12.-(1) A Court has not jurisdiction over -

- (a) proceedings involving the validity of a marriage contracted in accordance with the Marriage Ordinance, 1912-1935, of the Territory of Papua or the Marriage Ordinance 1935-1936 of the Territory of New Guinea;
- (b) proceedings for divorce or judicial separation where the parties were married under either of these Ordinances;
- (c) the offence of sorcery;
- (d) questions of whether land is or is not native land;
- (e) subject to Sections 21 and 22 of this Ordinance, questions

which are before or have been decided by any other Court or court of inferior jurisdiction, or the Supreme Court; or

(f) matters in relation to which the Administrator declares under the next succeeding subsection that the Court has not jurisdiction.

(2) The Administrator may, in the proclamation by which a Court is established or in a subsequent proclamation, declare that the Court has not jurisdiction in relation to matters specified in the proclamation.

(3) Subject to Sections 21 and 22 of this Ordinance, a Court has not jurisdiction in respect of any civil cause or matter unless -

- (a) the complainant was resident within the area in and for which the Court was established at the time the proceedings were instituted;
- (b) the cause of action arose within the area in and for which the Court was established;
- (c) no persons other than natives have any rights in respect of the subject matter of the proceedings and
- (d) where the proceedings are in respect of or involve questions of rights to or in relation to native land, the land is situated within the area in and for which the Court was established.

(4) Subject to Sections 21 and 22 of this Ordinance, a Court has not jurisdiction to try a person for an offence unless the offence was committed within the area in and for which the Court was established.

Orders in cases of criminal nature.

13.-(1) Subject to the provisions of this Ordinance and any other Ordinance in force in the Territory or a part of the Territory, and to any limitation imposed on the jurisdiction of the Court under this Ordinance, a Court in cases of a criminal nature may order -

- (a) the imposition of a fine not exceeding Ten pounds; or
- (b) the infliction of a term of imprisonment not exceeding six months,

and may make such additional order (including an order for compensation) as the justice of the case requires, but any such order shall be reasonable having regard to the nature and circumstances of the case.

(2) A Court may order that a fine which it imposes shall be paid at such time or times or by such instalments or in kind or otherwise as it thinks just.

(3) Subject to the next succeeding subsection, where a Court makes an order for the payment of a fine, it may also direct by its sentence that in default of the payment of the fine the offender shall suffer such period of imprisonment as will satisfy the justice of the case, not exceeding the maximum sentence which the Court could have imposed in the first instance.

(4) Imprisonment imposed under the last preceding subsection shall not exceed the maximum fixed by the following scale:-

<u>Amount of Fine</u>	<u>Maximum period</u>
Not exceeding 10s.	1 month
Exceeding 10s. but not exceeding £1	2 months
" £1 " " " £5	4 months
" £5	6 months

(5) The imprisonment which is imposed in default of payment of a fine terminates whenever the fine is either paid or levied by due process of law.

(6) Where a term of imprisonment is imposed by a Court in default of the payment of a fine that term shall, on the payment or levy of a part of the fine, be proportionately reduced.

(7) Compensation awarded by a Court under this section may be ordered to be paid at such time or times or by such instalments as it thinks just.

(8) When a Court orders compensation to be paid under this section to a person injured or aggrieved by the act or omission in respect of which the compensation has been imposed, that person, if he accepts compensation, shall not have or maintain in any court of the Territory a suit for the recovery of damage for the loss or injury sustained by him by reason of the act or omission.

Mode of imprisonment.

14. Notwithstanding any other law in force in the Territory or a part of the Territory, but subject to the approval of a District Officer or authorised officer and to such conditions as he determines or as are prescribed, a person sentenced by a Court to imprisonment, or to imprisonment in default of payment of a fine, for one month or less shall not be confined in a prison, but he shall be deemed to be undergoing that imprisonment if on every day, exclusive of Sundays, during the term of imprisonment imposed, he performs such communal work as the Court directs for a period of nine hours daily.

Awards in cases of a civil nature.

15.-(1) A Court, in cases of a civil nature, may -
 (a) award compensation (which may include an amount for costs and expenses incurred by a successful party or his witnesses);
 (b) order the restitution of property;
 (c) order the specific performance of a contract; or
 (d) make any other order which the justice of the case requires.
 (2) Compensation awarded by a Court under this section may be ordered to be paid at such time or times or by such instalments or in kind or otherwise as it shall think just.

Concurrent jurisdiction of Native Local Courts and other Courts.

16. Subject to Sections 12, 20 and 21 of this Ordinance, if jurisdiction in respect of a matter, whether civil or criminal, is vested in a Native Local Court and also in some other court, that matter may be heard and determined by either the Native Local Court or that other court.

Procedure and rules of evidence.

17. The practice, procedure and rules of evidence in relation to cases heard before a Court shall be as prescribed.

Parties to appear in person except with leave of Court.

18. Subject to this Ordinance, a legal practitioner, agent or advocate shall not appear or be heard before a Court on behalf of another person, but a Court may nevertheless permit the husband or guardian or a kinsman of a party to any proceedings to appear and act for that party.

Non-native competent but not compellable witness.

19. A person who is not a native is a competent but not compellable witness in proceedings before the Court.

Power to summon witnesses.

20. Subject to this Ordinance, a court may summon before it for the purpose of giving evidence or producing documents any native, whether within or without the area in and for which the Court is established.

Transfer of proceedings to other courts.

21.-(1) Where proceedings have been commenced in a Court, the Court or a District Officer or authorised officer may at any time before judgment, either with or without an application from an interested party in that behalf, for reasons which shall be recorded, stay the proceedings and, on such terms as seem to it or him just, transfer the proceedings for hearing and determination by some other Court.

(2) A District Officer or authorised officer may, at any time before verdict or judgment, either with or without an application from an interested party in that behalf, stay proceedings before a Court and order that the proceedings be heard before such court of inferior jurisdiction as he thinks fit.

(3) Where it appears to a court other than a Native Local Court that proceedings instituted before it are proceedings -

(a) over which a Native Local Court has jurisdiction under this Ordinance; and

(b) which can be more properly or more conveniently dealt with by the Native Local Court,

that court may order that the proceedings be dealt with by the Native Local Court.

Revisionary powers.

22.-(1) Subject to this section, a District Officer or authorised officer shall have access, at all reasonable times, to a Court and the records thereof, and may, of his own motion, or upon the application of an interested party -

(a) revise any proceedings of the Court by reversing, amending or varying the decision given but so that the decision as so revised is not in excess of the jurisdiction of the Court; or

(b) quash any proceedings, including criminal proceedings which terminated in an order of acquittal, and, where he considers it desirable, order the case to be reheard de novo either before the same Court or before some other Court or a court of inferior jurisdiction, of competent jurisdiction in proceedings of similar kind.

(2) Where proceedings are revised under paragraph (a) of the last preceding subsection -

(a) an order of acquittal in a criminal matter shall not be reversed; and

(b) a sentence in a criminal matter shall not be increased or a sentence of imprisonment substituted for a fine without an opportunity being first given to the convicted person to be heard.

(3) When proceedings are quashed and an order for rehearing made under paragraph (b) of Subsection (1) of this section, no plea of res judicata, autrefois acquit or autrefois convict shall be deemed to arise out of the proceedings so quashed.

(4) In exercising the powers conferred by Subsection (1) of this section, a District Officer or authorised officer may before giving his decision hear any evidence, or if he sees fit, return the case to the Court of trial or some other Court with a direction to hear further evidence or may exercise those powers without further evidence.

(5) Where a case is returned to a Court under the last preceding subsection and the further evidence has been taken, the Court shall then return the record to the District Officer or authorised officer for his decision.

(6) Proceedings shall not be revised or quashed under this section after the expiration of twelve months from the termination of the proceedings and proceedings shall not be further revised under this section in respect to any matter arising thereon which has previously been the subject of a revisional order under paragraph (a) of Subsection (1) of this section.

(7) For the purposes of the last preceding subsection, where a matter is reheard in pursuance of an order made under Subsection (3) of Section 24 of this Ordinance, the proceedings on the rehearing shall be deemed to be new proceedings.

Effect of transfer.

23.-(1) Where proceedings are transferred to, or are ordered to be heard before, a Native Local Court (other than the Court in which the proceedings were instituted or tried) or court of inferior jurisdiction under either of the last two preceding sections, the Court in which the proceedings were instituted or tried shall report the proceedings to that Native Local Court or court of inferior jurisdiction, and thereupon that Native Local Court or court of inferior jurisdiction shall proceed to the trial or re-trial of the case as though, in a criminal proceeding, a complaint of facts constituting the offence had been made to it, or in a civil proceeding, as though a plaint therein had been filed.

(2) When a District Officer or authorised officer orders a proceeding to be heard in a court of inferior jurisdiction under either of the last two preceding sections, he is not thereby debarred from acting as a member of that court on the hearing.

Appeal.

24.-(1) A person aggrieved by an order under Section 22 of this Ordinance or by the decision of a District Officer or an authorised officer on an application under that section may within the time and in the manner prescribed and with the consent of the Native Courts Adviser appeal to the Supreme Court.

(2) The Native Courts Adviser may, in his discretion, refuse his consent to an appeal under the last preceding subsection.

(3) The Supreme Court may, in the exercise of jurisdiction under this section -

- (a) make any order or pass any sentence which the Court from which the appeal is brought might have made or passed in the proceedings;
- (b) order a matter to be reheard before the same Court or some other Court or court of inferior jurisdiction having jurisdiction in proceedings of a similar kind; or
- (c) make such other order in the matter as to it seems just.

(4) Subject to the next succeeding subsection, in an appeal under this section the Supreme Court may, if it thinks fit, hear the case de novo.

(5) An appeal under this section shall not be allowed merely on account of disregard by the Court of trial or by the District Officer or authorised officer of legal forms or solemnities or any other legal rule, provided that substantial justice has been done.

Usurping
official
powers.

25. A person shall not exercise or attempt to exercise judicial powers within an area in and for which a Court is established, except in accordance with the provisions of a law in force in the Territory or part of the Territory, or sit as a member of a Court without due authority.
Penalty: Imprisonment for one year.

Members of Local
Courts taking
rewards.

26. A person being, or expecting to become, a member, officer or servant of a Court, shall not accept or obtain, or agree to accept or attempt to obtain, from a person, for himself or for any other person, any gratification, other than lawful remuneration, as a native [sic] or reward for doing or forbearing to do an act as such a member, officer or servant, or for showing or forbearing to show, as such a member, officer or servant, favour or disfavour to a person.
Penalty: Imprisonment for one year.

Taking reward
for influencing
Court.

27. A person shall not accept or obtain, or agree to accept or attempt to obtain, from a person for himself or for another person, any gratification or reward, whether in money or otherwise, for inducing or attempting to induce by corrupt or illegal means or by personal influence, a Court or a member, officer or servant of a Court, to do or forbear to do an act which the Court, member, officer or servant is authorised to do in the exercise of lawful jurisdiction or authority, or to show favour or disfavour to a person.
Penalty: Imprisonment for one year.

Contempt of
Court.

28. A person shall not -
(a) when summoned under Section 20 of this Ordinance before a Court refuse or fail so to do;
(b) wilfully interrupt, interfere with or disturb the proceedings of a Court;
(c) wilfully obstruct or attempt to obstruct a member of a Court or other person acting under this Ordinance;
or
(d) refuse to give evidence or to answer any lawful question when lawfully required to do so by a Court or a member of a Court.
Penalty: Ten pounds or imprisonment for six months, or both.

Jurisdiction
over certain
offences.

29.-(1) Subject to this Ordinance, an offence against any one of the last four preceding sections shall be prosecuted before -
(a) where the offence is committed in the Territory of Papua, a Court of Petty Sessions; or
(b) where the offence is committed in the Territory of New Guinea, a District Court.
(2) Nothing in this section shall be deemed to prohibit the Administrator from conferring jurisdiction over offences referred to in the last preceding subsection on a Court under Section 11 of this Ordinance.

Records and
returns of cases.

30.-(1) A record of each case instituted, tried or retried before or transferred to a Court shall be entered in a Court Record Book to be kept by that Court.
(2) The Court Record Book shall be in such form and contain such particulars as are prescribed.
(3) A District Officer or authorised officer may at any time inspect a Court Record Book and any other record of the proceedings of a Court.

(4) A Court shall, at such times and in such manner as are prescribed or as a District Commissioner or authorised officer orders, submit to the District Commissioner a report on the proceedings of the Court.

Advisers.

31. A District Officer or authorised officer may attend a Court as adviser to the Court.

Indemnity.

32.-(1) A member of a Court is not liable to be sued for an act done or an order made by him in the exercise of jurisdiction conferred by this Ordinance, or for an act done by him beyond the limits of that jurisdiction, if, at the time he did the act or made the order, he believed in good faith that he had jurisdiction to do the act or to make the order.

(2) An officer of a Court or other person bound to execute lawful warrants or orders issued or made in the exercise of jurisdiction conferred by this Ordinance is not liable to be sued for the execution in good faith of a warrant or order issued or made without lawful authority which he would be bound to execute if the person issuing or making the same had been acting in the exercise of lawful authority.

Regulations.

33. The Administrator in Council may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and in particular prescribing matters providing for, relating to, or incidental to -

- (a) the training of natives in rules of law and in judicial methods and procedure;
- (b) the appointment of Clerks of Court and other officers of Courts;
- (c) the practice and procedure of Courts;
- (d) the rules of evidence to be applied in Courts;
- (e) the limitation of actions in Courts;
- (f) the fees (if any) to be charged in Courts and on appeals under this Ordinance;
- (g) the awarding of costs in proceedings before Courts and on appeals under this Ordinance;
- (h) the remuneration of members and officers of Courts;
- (i) the practice and procedure applicable to appeals under this Ordinance;
- (j) the disposal and application of fines and fees received by Courts;
- (k) the bringing of actions by and against infants and other persons under disability;
- (l) the remanding of accused persons;
- (m) the granting of bail;
- (n) the preservation of testimony in cases of dangerous illness and in other cases;
- (o) the issue of warrants of arrest;
- (p) the issue, endorsement and execution of warrants of commitment;
- (q) the service and execution of process of a Court, whether within or without the area in and for which the Court is established;

- (r) offences in respect of which a Court may be vested with jurisdiction;
- (s) the performance of communal work under Section 14 of this Ordinance;
- (t) the powers, duties and functions of the Native Courts Adviser and of authorised officers; and
- (u) penalties not exceeding Ten pounds or imprisonment for six months for an offence against or contravention of the Regulations.

Appendix VII

The first United Nations Visiting Mission, 1950

The first visit of the first United Nations Visiting Mission to the Territory of Niugini occurred in May 1950. The first meeting between the Mission and any indigenous inhabitants of the Trust Territory occurred on a very hot day in the village of Vunakalkalulu in the Reimber area under a tree. The District Commissioner had asked me to do the translation for the Mission, i.e. translating English to Melanesian pidgin and back again. This was partly because I was one of the more experienced officers in Rabaul at that time, but more particularly because I was working in the Reimber area doing the preparatory work for the launching of one of the first of the Tolai councils (the Reimber Council). In translating, I worked on the principle of endeavouring to convey the meaning, rather than translating word for word.

The first question asked of the first United Nations Visiting Mission to New Guinea was "Why can't we drink?". The question was asked by ToKieia, an old luluai of the Reimber area who, even in those "blue-law days", managed to get drunk quite often. The question was first fielded by the French member of the Mission, Gouverneur Tallec, who adhered to the current French policy in the United Nations Trusteeship Council - France of course being at that time also a colonial power - that it was their pleasure and privilege to defend administering authorities. He said in English: "Don't you know that the government has made these laws because if you drink you will fight and wreck your trucks and fornicate and your women won't be safe?" When I translated this to ToKieia in pidgin, he replied "Emi orait", which I translated back to the Mission as "We are prepared to accept that risk".

Being asked this question - their first question - and being in the Trust Territory, and a new mission (and the Visiting Mission idea at that stage of course was quite new) threw the Mission into a small flap. They weren't sure whether to regard it as a petition or what. Sir Alan Burns, a rather cold-eyed haughty former British Governor of the Gold Coast as it was called then, adjourned the meeting briefly and the Mission members went into a secret consultation for a minute or two. When they emerged, he turned to me and said: "Would you please inform the petitioner that we have considered this request and that while we cannot claim to speak with the authority of the United Nations on this matter, it is our opinion as members of this visiting mission, that it would be better at this stage in your development if you did not drink alcohol". I translated this back to ToKieia as "Sir Alan Burns i tok mo beta yu larim drink pastaim", to which ToKieia replied "Mi laik traim tasol", which I translated back - and this is a fair translation - as: "I simply wish to ascertain your opinion", to which Burns responded "Obliging chap, isn't he?".

The meeting continued in that vein. It was extremely hot. Old ToPoi, the paramount luluai of the area, an old friend of mine (this was the area where I was doing the preliminary work leading to the establishment of one of the first two of the Tolai councils and I had been camping at Vunakalkalulu) - anyhow old ToPoi, a short man, a big shot, a member of the Iniad Society in his day (his grandfather had been a very big shot under the Germans) had gleaned a little of the glories of native local government, but not perhaps without some distortions, and he felt it was time for him to say some things to the Mission so he turned on a very spirited address to them. When he became excited he had a tendency to spatter a little and I recall the Mission people surreptitiously moving back a little out of range. He said that he thought that native government - by which he meant native self-government - was a glorious thing, he hoped to see it before he died, and so on.

He then with the politeness that all the old Tolai people always had, said that it was very hot and would they care for something to drink. They said they would. The only thing that was available was green coconuts which, of course, you have got to pick from the palm. So ToPoi, having extolled the glories of democracy, then turned on what I personally thought was a very amusing demonstration of Melanesian democracy in action by going around (he was quite steamed up and a bit excited by this time) kicking young blokes in the tail to get them up those coconut palms pretty fast to get green coconuts, called kulau, for the Visiting Mission.

D.M.F.

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