HINDSIGHT: A WORKSHOP FOR PARTICIPANTS
IN THE DECOLONISATION OF PAPUA NEW GUINEA
University House, Australian National University, 3-4 November 2002

Topics

* The Australian politics of Papua New Guinea constitutional change
  UN context, changes in ALP policy, parliament, evolution of Liberal-Country coalition policy

* The transfer of administrative power
  the 'gearing up' program, 1970, and the way in which powers were transferred

* National Unity
  Napidakoe Navitu, Mataungan Association, Papua Besena; and how these movements were treated in Canberra, and in the House of Assembly

* The Papua New Guinea politics of constitutional change
  the House of Assembly, its Select Committees, beginnings of Ministerial government, the Constitutional Planning Committee and its impact on parliamentary politics

* Aid
  debates and decisions about the amount, the form and the purpose

* Economic Development
  the development program, agriculture, mining, and the growth of towns

* Land
  land tenure (1971 Legislation) and the problem of land disputes

* Administration of Justice, Law and Order
  the Local Court, Village Justices. Anticipating the problems of crime and corruption; the development of a modern police force and its relations with the Defence Force

* Defence Force
  the transfer of authority, structure of the PNGDF, relations to police and the civil power

participants

Prime Minister          Gough Whitlam
Ministers              Tom Leahy (AEC), Bill Morrison (Territories), Ebia Olewale (Education)
High Commissioners     Tom Critchley and David Hay
Commonwealth Public Servants Pat Galvin (Territories), Christine Goode (Territories), John Greenwell (Territories), Bruce Hunt (Foreign Affairs), Colin MacDonald (Foreign Affairs), Don Mentz (Territories), Jim Nockels (Defence)
PNG Public Servants    Tom Allen (Finance), Hal Colebatch (AdCol), Geoffrey Dabb (Foreign Affairs), Jim
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Fingleton (Lands), Ross Garnaut (Finance), Mark Lynch (Cabinet Office), Nick O’Neil (Public Solicitor), Alkan Tololo (Education), Alan Ward (Lands)

Political Advisers  Peter Bayne (United Party), John Ley, David Stone, Ilinome Tarua and Ted Wolfers (Constitutional Planning Committee)

Commentators  Chris Ashton (journalist), John Ballard (Political Scientist), Peta Colebatch (defence analyst), Sinclair Dinnen (police), Sean Dorney (journalist), Jim Griffin (historian), Robin Hide (anthropologist), David Hook (AusAID), David Lee (DFAT), Kieth Mattingly (journalist), Hank Nelson (historian), Annette O’Neil (student), Jonathan Ritchey (history student), June Verrier (student), Patti Warne (Morrison’s staffer).

Apologies

Minister  Andrew Peacock

Commonwealth Public Servants  Tim Besley (Territories) Paul Kelloway (Territories)

PNG Public Servants  David Beatty (National Planning), Bill Conroy (Foreign Affairs), John Langmore and Charles Lepani (National Planning), Mekere Morauta (Finance), Rabbie Namaliu and Meg Taylor (both in Somare’s office)

Political Advisers  Tos Barnett (Somare’s office)

Commentators  Patrick Ferry, David Hegarty, Bill Standish, David Weisbrot.

Sunday 3rd November

The political context of constitutional change

The Australian political context of Papua New Guinea and constitutional change:

John Greenwell

With Mr Whitlam leading the discussion and Bill Morrison on the panel, I should say something about the Coalition years -- 1970 to 1972. I have chosen to speak of the influence of John Gorton on constitutional development.

I go first to his PNG visit between 6th and 11th July 1970. In his Port Moresby address, as you will recall, he announced important constitutional changes. He took as his base the belief that 'the time had come when less should be referred to Canberra for decision and more should be retained for decision by the Administrators Executive Council and by the Ministerial members who for the most part make up that Council.'

He spelt out the details: -- appointment of a Spokesman for the A.E.C. in the House of Assembly who could of course be questioned by members and an undertaking that the Australian Parliament would not veto ordinances on subjects falling within ministerial member responsibility.

He then announced a comprehensive transfer of executive power. This was done through an ingenious mechanism provided for in the Papua New Guinea Act and introduced, I think, in 1968. It allowed the Minister to determine from time to time the functions of Ministerial Members. It was through instruments made under these powers that executive power was progressively transferred to PNG Ministers until self- government -- when the PNG Act was amended.

The powers, transferred in this way - summarised by the Prime Minister in his address and detailed by Mr. Barnes - were, on any view, very substantial:"education - primary, secondary, technical but not tertiary  - public health, tourism, cooperatives, business advisory services, workers compensation, industrial training, posts and telegraphs, territory
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revenue including taxation .. price control, coastal shipping, civil defence, corrective institutions, registration of customary land, town planning and urban development."
The transfer of these powers was accompanied by an Instruction to the Administrator that he was to accept the advice of the AEC and any individual Ministerial member on a matter of PNG responsibility.

There is one aspect to which I would draw your attention. This devolution of power took place without the approval of the House of Assembly and without consideration by it. The process may perhaps be described as proto-Whitlamesque.

And indeed the House of Assembly appeared to think so because on the 22nd September it resolved that any future transfers of power or constitutional changes would not be acceptable to the House unless agreed to by a majority of its members.

The July visit was the culmination of increasing Prime Ministerial involvement. On 6th February he had met with the Select Committee on Constitutional Development and pressed upon them the importance of the transfer of increased powers.

On 4th March Mr Barnes announced increased authority for ministerial members enabling them to become responsible for the day to day running of their departments within the framework of broader government policy. Gorton is reputed to have told his Minister that this was not enough. True or not, subsequent action suggested that that was his opinion.

In May he initiated very important changes at the top with the appointment of Les Johnson as administrator and David Hay to head Territories.

In this period therefore Gorton assumed a dominant role in PNG affairs. In particular, he initiated a change in policy on constitutional development evidenced by the very substantial transfer of power -- possibly the greatest before self-government -- and this was done without the approval of the House of Assembly or any initiating recommendation by the Select Committee on Constitutional Development. The reality, I believe, was that this constituted a change of policy although it was not articulated by Mr Gorton in his Port Moresby address. But it was that changed policy which continued to be the basis of Australian Government action in constitutional development until December 1972.

All of this was and is the subject of debate. My own view is that the Gorton influence was highly beneficial. The situation of PNG demanded firm policy direction. Insurrection on the Gazelle, discontent in Bougainville, the people of PNG were uncertain and the Australian public restive. And the amount of power transferred was just about as much as the House of Assembly as then constituted could digest without ongoing recrimination.

Mr Peacock did not initiate any change in policy. He did not need to. It had been set in 1970. The changed policy dovetailed with the Select Committee's recommendations in March 1971 to prepare for self-government during the life of the next House of Assembly. Also, importantly and fortunately, Pangu succeeded in forming a coalition government following April 1972 elections.

The changed policy meant that whilst adhering to the formula of constitutional advance being determined by the wishes of the people as reflected in the House of Assembly, Australia would now actively encourage self-government. Mr Peacock articulated this in an April 1972 speech to the Bowman electorate when he said, "the government believes it should help Papua New Guinea towards self-government. We should be remiss if we sat back and just waited for it to happen. This is quite a different matter from imposing self-government regardless of the wishes of the people. We believe we should encourage self-government ..."

**The Decolonisation of Papua New Guinea**

E.G. Whitlam (prepared paper)

Last March Professor Donald Denoon asked whether I would consider an invitation to this workshop. His first sentence declared ‘one of the great monuments of your political career is an independent PNG’. I could scarcely resist.

a list of the visits. This list of my itineraries and comments on them would be useful for the editors of the DFAT
volume on the 30th anniversary of independence.

My first visit was on my way back to the Philippines, where I was navigator of the only Empire aircraft attached to
MacArthur’s headquarters. I frequently saw the pioneer Mick Leahy (1901-79), who was working for the American
forces. When he married in 1940, my wife was his wife’s bridesmaid. She attended the family dinner to celebrate our
60th wedding anniversary in April this year. I did not always share Mick’s views but I learned much from him. (He
scored a footnote in Downs at page 175.)

My second visit was in 1953, my first year in Parliament. I was in the Parliamentary group which accompanied
Governor-General Slim when he dedicated the Commonwealth War Graves in Lae and outside Port Moresby and
Rabaul. My father-in-law had been a sergeant in the Australian Naval and Military Expeditionary Force which captured
Rabaul in 1914.

(At a Chatham House conference in Palmerston North, New Zealand, in January 1959, Paul Hasluck, Minister for
Territories, and I were among the Australian participants and James Callaghan among the British. I raised
developments in PNG, the Solomons and the New Hebrides. I discussed these territories in my book at pages 115-119.)

In March 1960 Arthur Calwell and I were elected Leader and Deputy Leader of the ALP. In July I used the greater
facilities which had become available to me to take Lance Barnard, Charlie Jones and my wife on an extensive tour of
PNG. We noticed the campaign being mounted by the Protestant churches against drinking by the indigenous
population; they thought it futile to urge prohibition for the expatriate population. Calwell took a simultaneous but
different itinerary with Clyde Cameron and Dr Felix Dittmer.

In October 1960 my wife and I attended the meeting of the Legislative Council at which Governor-General Dunrossil
assented to amendments to the Papua and New Guinea Act. In my book at page 78 I describe the humiliating treatment
accorded to Dr Reuben Taureka MLC when we took him to lunch at our hotel.

In January and February 1963 I made an extensive tour with Frank Crean and a new senator, Sam Cohen, Q.C. (Downs
at page 460 mentions an unknown W.J. Harrison.) At the end of our tour the Rotary Club of Port Moresby asked me to
address a dinner at which there were 200 guests, including six Papuans. My theme was that Australians could justify
their role in PNG’s society and economy only if the indigenes perceived that they were being prepared to participate in
all the jobs performed anywhere in PNG. My illustrations of sea and air transport produced hilarity which was
discourteous to the Papuans and irksome to me. I telegraphed Reg Ansett and the chairman of TAA. The former
promptly responded and set out to train PNG aircrew. I never heard from the latter. The ALP Commonwealth
Conference (29 July – 2 August 1963) adopted, to Calwell’s displeasure, a specific and advanced policy on PNG drafted
by Don Dunstan and me.

In April 1965 my wife and I attended a seminar in Goroka on the 1963-64 World Bank report. Nugget Coombs
supported the assumption of some responsibility for the allocation of budget funds by elected members of the House of
Assembly. I declared, ‘The rest of the world will think it anomalous if PNG is not independent by 1970.’ C.E. Barnes,
Minister for Territories, opposed my view. John Guise, the leader of the elected members of the House of Assembly,
did not publicly support me but privately conceded that he shared my opinion (Downs, page 460).

(In August 1966 the British Colonial Secretary, Arthur Bottomley, visited Australia for a fruitless discussion with the
Holt Government on the New Hebrides. He briefed me.)

I was elected Leader and Lance Barnard Deputy Leader of the ALP in February 1967. At the House of Representatives
elections in November 1966 the Coalition had received 49.98% of the votes and the ALP 39.98%. At the elections in
October 1969 the votes were 43.3% and 46.5%: the Coalition won on DLP preferences. I was encouraged to make my
seventh and longest trip to PNG to propagate and develop the ALP’s policy. At the end of December I set out in an
RAAF plane with Bill Hayden, Kim Beazley, Graham Freudenberg and Peter Cullen from my staff, my son Antony and
several pressmen. The most dramatic moments of our tour were in Rabaul, where we were greeted by the combined
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choirs of the Catholic and Methodist churches and cheered by a congregation of 11,000, the largest in the Territory’s history. Downs at pages 464 and 465 quotes the text of ‘Labor’s Plan for New Guinea’ which I issued on the eve of our departure from Port Moresby.

Between 6 and 11 July 1970 Prime Minister John Gorton, who had never visited PNG and who, as a senator, had not engaged in debates on PNG, and David Hay, the new Secretary of the Department of External Affairs and former Administrator of PNG, made as extensive a tour of PNG as I had made but in one-third of the time. They were greeted in Rabaul by an audience of 10,000 who were as hostile as our 11,000 had been enthusiastic. Tom Ellis, head of the Department of the Administrator, gave Gorton a handgun. In a panic, on Sunday 19 July, Gorton called a cabinet meeting which, without a written submission, agreed on the precautionary step of an Order in Council calling out the Pacific Islands Regiment. Tension between Gorton and Malcolm Fraser, the Minister for Defence, over this proposal was a factor in the resignation of Fraser on 8 March 1971 and the replacement of Gorton by McMahon two days later. Downs and I were not allowed to see the Cabinet papers: (Downs, footnote 56 on page 484, and Whitlam Government, page 92). Fraser’s and Gorton’s accounts are in HANSARD of 9 March 1971 at pages 683 and 688. Tom Hughes, Gorton’s Attorney-General, gave his account in his eulogy at Gorton’s State Funeral. Minister Downer has given me the archived copies of the Cabinet minutes, which I attach. The Order in Council was repealed on 22 April 1971. Meanwhile, in January 1971, I made another visit to PNG as Leader of the Opposition. I went with Tom Burns and Mick Young, Federal President and Secretary of the ALP, Bill Morrison, who had been elected to the House in 1969 after 20 years in the Australian diplomatic service, and Clyde Cameron, who was now free to revisit PNG, the time having expired for writs to be served on him by those who felt aggrieved by his remarks in 1960. My wife and my sister, Freda Whitlam, a school principal, also accompanied me.

On 20 May 1971 Barnes reaffirmed that it was the policy of the Australian Government to advance PNG to internal self-government and independence as a united country (Downs, 446).

On 23 June 1971 the ALP National Conference declared that ‘the Labor Party will ensure the orderly and secure transfer to PNG of self-government and independence in its first term of office.’

Barnes resigned from the ministry on 25 January 1972. Andrew Peacock was appointed Minister by McMahon on 2 February and quickly established constructive relations with all the indigenous politicians and officials.

Australian Parliament

My maiden speech on international affairs was delivered on 15 September 1953. I discussed the regional territories which were still subject to the Netherlands, Portugal, Britain and France. Paul Hasluck constantly interjected on my references to Indo-China but not on my references to PNG. I pointed out that, although Papua was an Australian colony, the first Minister for External Territories, E.J. Ward, had stated that the Chifley Government had no objection to the Trusteeship Council exercising surveillance over Papua. Outside Parliament I applauded Hasluck for substituting an Australian flag at Government House in Port Moresby for the Union Jack that his predecessors Ward and Spender had not noticed and for resisting RSL pressure to allow soldier settlements in Papua.

Calwell condoned Hasluck’s leisurely programs because he believed the territories were a cordon sanitaire for White Australia. The schoolteachers in Caucus rebelled when the 1961 annual reports for the two territories made identical statements:

There are no universities in the Territory and some years must elapse before their existence can be justified. Qualified students have access to universities in Australia.

The Trusteeship Council’s fifth Visiting Mission under Sir Hugh Foot was due in Canberra in the second week of April 1961. Before the House adjourned in the early hours of Friday 6 April Kim Beazley gave notice that he would propose an urgency debate on

the need to establish a university in PNG with faculties designed to meet urgent needs and with residential colleges, and with ancillary high schools and technical schools to give secondary schooling adequate to
prepare the undergraduate students of that university for university courses.

On Sunday night 8th April the ABC broadcast a statement by Hasluck that the government intended to establish a university college in association with an administrative college. On the next sitting day Beazley, Len Reynolds and Gordon Bryant regaled Foot and his colleagues with well-documented accounts of the deficiencies of education in PNG. The Mission was not satisfied with Hasluck’s belated proposals. It reported

The Administration’s education program for mass literacy is commendable but, in terms of today’s world and today’s needs in New Guinea, it is inadequate. Three results are discernible from the present policy: first, a broadening of the literacy base; secondly, the providing of a number of indigenous teachers for primary schools; and, thirdly, the providing of workers to feed into the economic stream at the unskilled and the semi-skilled levels. But the existing system does not: (a) provide university education; (b) produce individuals capable of replacing Australians in other than unskilled or semi-skilled positions; (c) give a level of knowledge required to exercise responsibility in the field of commerce or industry; (d) make provision for senior administrative and professional staff; or (e) adequately generate political confidence and leadership.

In March 1963, Hasluck appointed the Currie Commission to prepare plans for higher education. It reported to Hasluck’s successor, C.E. Barnes, in March 1964.

Separatism

At the 1972 elections my more dramatic commitments on China and Viet Nam somewhat obscured the fact that the ‘It’s Time’ Policy Speech set out a comprehensive framework for Australia’s international relations, with specific priorities:

A nation’s foreign policy depends on striking a wise, proper and prudent balance between commitment and power. Labor will have four commitments commensurate to our power and resources;

First, to our own national security;

Secondly, to a secure, united and friendly Papua New Guinea;

Thirdly, to achieve closer relations with our nearest and largest neighbour, Indonesia;

Fourthly, to promote the peace and prosperity of our neighbourhood.

The emphasis on a united PNG and its juxtaposition with Indonesian relations was not accidental. They were fundamental to regional stability and, equally, to the fulfilment of our United Nations trusteeship. After my visits of 1970 and 1971, there was no question but that Australian government policy would set the same goal for the Territory of Papua and the Trust Territory of New Guinea and that bipartisan goal would be the independence of a united PNG. Nevertheless, centrifugal forces in PNG were immense and intense: economic, historical, regional, racial and religious. Another 30th anniversary should be noted: the third House of Assembly elections in February-March 1972 and the creation of a coalition government (Pangu with 7 ministers, People’s Progress Party 4, National Party 4 and 2 Independents) with Michael Somare as Chief Minister.

On 14th March 1972 the UN General Assembly resolved to call upon Australia to prepare, in consultation with the Government of PNG, a further timetable for independence. The resolution re-affirmed ‘the importance of ensuring the preservation of unity’. In Canberra on 17 January 1973 I assured the Chief Minister that we would follow the time-table agreed by the McMahon Government for self-government on 1 December 1973, but that full independence could be achieved as early as 1974. In Port Moresby on 18 February 1973 I said:

It is folly for anybody to believe that any section of Papua New Guinea would serve its interests by going it alone. For it would truly mean going alone.

In December 1973 the UN General Assembly emphasised the ‘imperative need to ensure that the national unity of PNG was preserved and strongly endorsed the policies of the administering authority and of the Government of PNG aimed at discouraging separatist movements and at promoting national unity.’

The forgetfulness of things not in yesterday’s headlines is such that it is commonly thought that PNG separatism was
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restricted to Bougainville. In fact, from December 1972, through Self-Government in December 1973 and right up to Independence in September 1975, PNG unity came under desperate and disparate challenges. There was separatist rioting and violence in Goroka, the Gazelle Peninsula, Kieta and Port Moresby itself. The Papuan secessionist movement, Papua Besena, was led by Josephine Abaijah, MHA for Central Regional. She was an educated and sophisticated version of Pauline Hanson. She openly exploited tensions between Papuans and Highland workers in Port Moresby. Father John Momis, MHA for Bougainville Regional, a Marist Brother and protégé of Bishop Leo Lemay, supported a separate Bougainville. The diocese had been called German Solomon Islands from May 1898, Northern Solomon Islands from May 1930 and Bougainville from November 1966 (Annuario Pontificio). Lemay was a brother of General Curtis Lemay.

In August 1975 Bougainville separatists unilaterally declared a new nation to be known as the Republic of North Solomons. On 1 September declarations of independence were made in Arawa and Kieta, the latter attended by Leo Lemay’s successor, Gregory Singkai.

A week before independence, the PNG Minister for Justice, Ebia Olewale, and Father Momis both appeared before the UN Trusteeship Council in New York. Momis said that Bougainville wished to determine its own destiny and that its 90,000 people were ethnically and culturally part of a separate Solomon Islands group. Olewale told the Council that if the separatist principle was accepted it could result in 700 potential mini-states. The Trusteeship Council unanimously extended congratulations to Papua-New Guineans on their successful preparations for independence and expressed confidence that the unity of the country would be successfully maintained. The President and three members of the Council attended the ceremonies at Port Moresby on Independence Day, 16 September. Josephine Abaijah was not present.

Australia did, indeed, have the power and commitment to bring a united PNG to independence. More, Australia had the highest national and international obligations to do so. The most powerful force for unity was the momentum towards independence once self-government had been achieved. As Michael Somare wrote in his autobiography Sana (1975): ‘It took me months to get the self-government date of 1 December 1973 passed by the House of Assembly, but only forty-five minutes to set the date for Papua New Guinea’s independence.’ Papuan secessionism, in particular, withered in the face of my Government’s determination that independence would be secured only by a House of Assembly speaking for a united PNG. As it was, it was a closer run thing than many admit. What kind of message would have been received in Rabaul, Kieta or Port Moresby if the Australian Government had been playing a different game elsewhere in the region?

When PNG achieved independence our security agencies asked me if we should leave our bugging equipment in place as the British had done in Africa. I told them that we should not. The equipment, however, was still in place when the Hawke Government took office.

Education after Independence

As a member of the Unesco Executive Board (1985-89) I noted that Australia, like all colonial powers, had for too long left schools and clinics to missionaries. Protestant missionaries translated the gospels, and sometimes the whole Bible, into regional dialects. They failed to promote national languages in Melanesia. In Africa and Latin America, on the other hand, Catholic missionaries at least made Spanish, Portuguese and French into the national languages of their old colonies.

A Melanesian Literacy Project was established as an Australian International Literacy Year project in February 1990. In March I was the head and Margaret was a member of the Australian delegation to the World Conference on Education for All at Jomtien, Thailand. The Solomon Islands and Vanuatu ministers for education, Jerry Tetaga, head of the PNG delegation and secretary of the PNG Department of Education, and I agreed that government-to-government discussions on the project should take place. The PNG, Solomon Islands and Vanuatu ministers and officials representing the Australian minister held discussions in Port Moresby on 17-18 May. The ministers agreed to form a
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Melanesian Literacy Council to cooperate in literacy development and expressed gratitude to the Australian
Government for making the project possible. Kim Beazley junior, the Minister for Employment, Education and
Training, did not pursue the project.
When the Hawke Government sent me as Australia’s permanent delegate to Unesco in 1983, I was briefed to secure
Australia’s transfer from the Western European group, Group I, to the Asia and Pacific group, Group IV. In 1985 the
General Conference at Sofia unanimously approved the transfer at the 1987 Conference of a Board seat as well as
Australia and New Zealand from Group I to Group IV. Tetaga succeeded me on the Board from 1989 to 1993. It has
become accepted that two states from the South Pacific Forum should have representatives on the Board.

Conclusion
I am grateful for the invitation to this workshop and the terms in which it was made. Yet I still hear it asserted that my
government was in error in pushing PNG into independence too soon. It is exactly the argument used 150 years ago
against self-government for the settlement colonies of the British Empire, the argument that they were not ready. In the
case of PNG, however, I use no such lordly and imperial arguments. I simply assert that, had we delayed PNG
independence, even for another year, we would have put the country in the gravest danger of breaking up.

Appendix: E.Gough Whitlam, visits to Papua New Guinea
27. 5.45 Townsville-Milne Bay-Manus
28. 5.45 Manus-Biak-Palau
18.10.53 Brisbane-Port Moresby
20.10.53 Port Moresby-Lae
22.10.53 Lae-Finschhafen-Rabaul
24.10.53 Rabaul-Lae
25.10.53 Lae-Brisbane
24. 7.60 Brisbane-Port Moresby
26. 7.60 Port Moresby Goroka
27. 7.60 Goroka-Kundiawa-Omkolai-Kerowagi-Kundiawa
28. 7.60 Goroka-Wau
31. 7.60 Lae-Finschhafen-Rabaul
 3. 8.60 Rabaul-Lae-Port Moresby-Brisbane
16.10.60 Cairns-Port Moresby
18.10.60 Port Moresby-Brisbane
29. 1.63 Brisbane-Port Moresby
30. 1.63 Port Moresby-Lae-Goroka
31. 1.63 Goroka-Madang
 1. 2.63 Madang-Lae
 2. 2.63 Lae-Finschhafen-Lae
 3. 2.63 Lae-Rabaul
 4. 2.63 Rabaul-Kavieng-Rabaul
 7. 2.63 Rabaul-Lae-Port Moresby
10. 2.63 Port Moresby-Brisbane
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10. 4.65 Brisbane-Port Moresby
12. 4.65 Port Moresby-Lae-Goroka
13. 4.65 Goroka-Port Moresby-Brisbane-Sydney-Canberra
14. 4.65 Canberra-Sydney-Brisbane
15. 4.65 Brisbane-Port Moresby-Goroka-Minj-Banz-Mt Hagen
17. 4.65 Mt Hagen-Banz-Lae-Port Moresby-Brisbane-Sydney
28.12.69 Sydney-Townsville-Port Moresby
30.12.69 Port Moresby-Daru-Port Moresby

1. 1.70 Port Moresby-Lae
2. 1.70 Lae-Goroka
3. 1.70 Goroka-Mt Hagen-Madang
4. 1.70 Madang-Vanimo-Wewak
5. 1.70 Wewak-Manus
6. 1.70 Manus-Kavieng
7. 1.70 Kavieng-Rabaul
8. 1.70 Rabaul-Kieta
10. 1.70 Kieta-Buka-Port Moresby
12. 1.70 Port Moresby-Townsville
3. 1.71 Brisbane-Port Moresby
5. 1.71 Port Moresby-Goroka-Mt Hagen
6. 1.71 Mt Hagen-Madang
8. 1.71 Madang-Lae
10. 1.71 Lae-Rabaul
13. 1.71 Rabaul-Port Moresby-Gurney
14. 1.71 Gurney-Port Moresby
17. 1.71 Port Moresby-Brisbane
18. 2.73 Canberra-Sydney-Port Moresby
19. 2.73 Port Moresby-Goroka-Port Moresby
20. 2.73 Port Moresby-Jakarta
14. 9.75 Cairns-Port Moresby
17. 9.75 Port Moresby-Canberra
30.10.79 Manila-Port Moresby

1.11.79 Port Moresby-Brisbane-Sydney
17. 2.81 Honiara-Kieta-Port Moresby
20. 2.81 Port Moresby-Brisbane
5. 8.84 Sydney-Brisbane-Port Moresby
8. 8.84 Port Moresby-Mt Hagen-Port Moresby
When I entered Parliament in 1969, independence for Papua New Guinea was not on the political horizon. The Minister for External Territories, Charles Barnes, was of the opinion that it might eventuate twenty or thirty years hence. The Liberal Government had opposed the report of the UN visiting mission recommending that a specific timetable be drawn up and consequently abstained on the UN resolution.

Gough Whitlam's statements during his visits to PNG in 1970 and 1971 - on the latter of which I accompanied him - broke the nexus. In June 1971 the Labor Party National Conference resolved that "the Labor Party will ensure the orderly and secure transfer to Papua New Guinea of self-government and independence in its first term of office".

In 1972 the Liberal Government changed its policy towards PNG and adopted the Labor Party's approach. Australia now had a bi-partisan policy on PNG.

In opposition, the Labor Party endorsed the agreement between the new PNG government (headed by Michael Somare) and the Australian Government to work towards self-government by 1 December 1973.

In government the Labor Party proceeded to implement this agreement. We did not want the process of achieving self-government to extend beyond 1 December 1973. Nor did we regard 1 December 1973 as the date on which a large bundle of powers would be handed over. Our approach was that the transfer of power should be accelerated so that by the target date all the powers would not only have been transferred but the PNG Government would also already be exercising those powers.

The process of transferring power was not confined to the self-governing powers. We started putting in place the powers and functions normally associated with independence - foreign affairs and defence.

From the very beginning, and particularly in our many visits to PNG, we sought in public statements and private talks to gain acceptance of the proposition that self-government was the big step and that in comparison independence, as far as the exercise of powers was concerned, was a much smaller step. Our intention was to demystify the concept of independence and to overcome the concern if not fear in the minds of many Papua New Guineans.

Our overall objective was to minimise the interregnum between self-government and independence. Our concern was that, having handed over all the powers relevant to the domestic economic, social and political life of PNG, we could hardly be held responsible for decisions over which we had no control. Nor would we be in a position to fulfil the Trusteeship obligation of maintaining law and order when the administration of justice and the control of police was not in our hands. Australia would be placed in an untenable position. I was also concerned that with the successful achievement of self-government, a period of lethargy might ensue which could encourage proponents of secession, particularly in Papua and Bougainville, to exert pressure on the newly empowered self-governing House of Assembly.
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In his speech at the opening of the new Parliament on 27 February 1973 the Governor-General, Sir Paul Hasluck, said:

My Government will move with due speed towards the creation of an independent, united Papua New Guinea. Legislation will be introduced to provide for Self-Government on 1 December 1973 or as soon as possible thereafter.

There was a lot to be done. There were, for instance, 280 Australian Acts that applied to PNG.

On 14 March 1973 I announced that responsibility for the public service would be transferred by August. The interval was required to put in place the Australian Staffing Assistance Group and the termination arrangements for expatriate officers whose positions had been localised.

Many of the powers were transferred by executing instruments under the Papua New Guinea Act to devolve the authority of the Minister for External Territories upon Ministers of the House of Assembly.

In a statement to Parliament on 3 May 1973, I was in a position to advise that "Papua New Guinea Ministers are finally responsible for such things as Education, Health, Works, Finance, Labour, Agriculture, Stock and Fisheries, Local Government, Information, Social Development and Transport and thus have effective control over virtually all aspects of the internal government of Papua New Guinea”.

The bulk of the powers of self-government had been transferred seven months before 1 December 1973.

In the statement of 3 May I also referred to significant changes in other areas.

I pointed out that the continuation of officials appointed by the Governor-General of Australia as members of the House of Assembly and the Administrator's Executive Council would be an anachronism and proposed their withdrawal.

The functions of the Division of District Administration, the Local Government Office and Intelligence Branch, all of which were part of the Administrator's Department, were to be transferred to a new Department of the Chief Minister and Development Administration.

I also pointed out that "a matter for which the Australian Government is reluctant to continue to accept responsibility is the legal system apart from the Supreme Court of Papua New Guinea", and urged the PNG Government to assume this responsibility "at an early date”.

On 23 August 1973 there were further amendments to the PNG Act which brought about formal self-government in PNG and provided the means by which Australian legislation may be discontinued in its application to PNG. The bill dealt with the new office of the High Commissioner - a transitional role best described as an embryo "Head of State" as well as the Australian Representative. The bill also covered arrangements for the exercise of reserved powers.

Along with the transfer of self-government powers we provided opportunities for the PNG Government to play a greater role in foreign affairs and defence, and develop its own international identity.

PNG participated in meetings of ECAFE and the South Pacific Commission. It became a member of the Colombo Plan in December 1973. PNG was directly involved in the negotiations on the border with Indonesia and the Chief Minister signed the agreement on 12 February 1973 in Jakarta. This was a particularly pleasing outcome as it implemented a recommendation of a SubCommittee of the Joint Parliamentary Foreign Affairs Committee of which I had been Chairman in 1972.

During 1973 we encouraged the PNG Government to develop its own foreign affairs and defence sections and to
appoint a full-time Minister as the spokesman on foreign affairs and defence. This initiative was consistent with our approach to hand over foreign affairs and defence powers progressively to the PNG Government not only before independence but before self-government. The Department of Defence Foreign Affairs and Trade was established in April 1974. A full-time Minister for Foreign Affairs and Defence was appointed on 1 August 1973 - four months before self-government.

Despite the doomsday prophesies which caused many expatriates to absent themselves from PNG, either temporarily or permanently, 1 December 1973 passed quietly. As one contemporary commentator observed, it was an anticlimax. It was meant to be.

Back in Canberra we had worked ourselves out of a job. There was no longer an Australian Minister for External Territories. The Department had been abolished. I became the Minister assisting the Minister for Foreign Affairs with responsibility for coordinating the movement to independence from the Australian side. Fortunately I had a remarkably talented and dedicated team, led by the Director John Greenwell and Alan Kerr, forming the Papua New Guinea Office which was responsible directly to me.

The Constitutional Planning Committee had failed in its first task of preparing a constitution for self-government. It showed little urgency in preparing a home grown constitution for independence.

The CPC became a focal point for those reluctant to move to independence, and in coalition with some members of the House of Assembly, became the effective opposition to the Somare Government.

On 12 March 1974 Somare announced that he would move in the April session a motion that PNG should become independent by 1 December 1974.

During a visit to PNG at the time, the Fijian Prime Minister, Ratu Sir Kamisese Mara, observed that whoever invented self-government had never had to make it work. "Full steam ahead for independence" was his advice. It was a viewpoint with which I wholeheartedly concurred.

Prospects were bleak, the more so when the PNG Government raised the possibility of bringing forward the date of the next election. Although it was intended as a ploy to concentrate the minds of members of the House of Assembly, an election before independence had been achieved would have been a minefield.

The Labor Party from the very beginning made it clear that independence was a two sided coin. In an address to the Victorian Branch of the Australian Institute of International Affairs on 22 April 1973, I had pointed out that while it is generally accepted that colonies should have the right to self-determination and independence, it is equally true, although admittedly novel, that a colonial power could not be forced to continue to rule its colonies.

On 10 July 1974, in response to the vote in the House of Assembly, I stated the Australian Government's view that "pending the final decision of the House of Assembly to declare a date for independence for Papua New Guinea, the Australian Government will conduct its relations with the government of Papua New Guinea as a government of an independent nation to which Australia has certain special and inescapable obligations". I added that "what exists today is a state of de facto independence".

Our contingency planning now concentrated on the upcoming session of the United Nations. We expected that independence would be achieved in 1975 and before the UN session in late 1975. We did not want to wait another year to terminate the Trusteeship Agreement. In this we were successful. UN Resolution 3284 of 16 January 1975 resolved:- "in agreement with the administering power that on the date on which Papua New Guinea will become independent the
In early 1975 I paid several visits to PNG and spent more time with the opposition groups than with the Government. I flew to Wabag on 31 January 1975 to impress upon the opposition leader, Tel Abal, who I knew supported a unified PNG, that there was a real danger of disintegration if the movement to independence continued to drift. On 6 February, after I had left Wabag, Tei Abal issued a press statement asserting that "Papua New Guinea trust not be allowed to separate into small fragmented units ... cooperation and unity was the only way to build a strong nation". In a meeting in Port Moresby with Father John Momis, I stressed the importance of finalising the CPC report. Although he advocated special arrangements for Bougainville, he recognised the very real prospects of political uncertainty in PNG.

Meanwhile the transfer of the two independence powers - foreign affairs and defence - proceeded. The PNG Government requested the transfer of defence powers in December 1974 to which we readily agreed. However, it decided that given the political situation in PNG the transfer should be deferred. The transfer was accomplished in March 1975 with provisos about the use of Australian personnel in operational situations and the call out provision of the PNG Defence Act. On 9 October, as Minister for Defence, I tabled the Interim Defence Arrangements which covered details governing the defence relationship through the early period of independence.

On 4 March 1975 I tabled in the House of Representatives the text of the exchange of letters dated 27 February 1975 between Senator Willesee and Sir Maori Kiki on the transfer of foreign affairs powers.

The final chapter in fixing the date for independence came in a flurry of parliamentary manoeuvres in the House of Assembly.

As late as 28 May 1975 the Government had lost four divisions relating to the draft of the constitution. Talks with Bougainville representatives reached an impasse on 13 June which had the effect of galvanising those members of the House Assembly who, although reluctant about moving to independence, were steadfast in wanting a united Papua New Guinea.

On 18 June the House rescinded the July 1974 resolution requiring that a constitution had to be passed first and at 5 pm the motion for Independence Day on 16 September 1975 was passed. Michael Somare had finally won out.

The birth of a new nation on 16 September 1975 was rightfully a cause for celebration for the people of PNG. Unlike decolonisation in other parts of the world, it had been achieved without rancour or the loss of blood. It was also an event to be celebrated by the many thousands of Australians who over many years had made their contribution to the development of the new nation. The tone of the celebrations was set by the new Governor-General, Sir John Guise, and the Leader of the Opposition, Tei Abal.

At a ceremony on 15 September Sir John Guise said, "it is important that the people of Papua New Guinea and the rest of the world realise the spirit in which we are lowering the flag of our colonisers. We are lowering it - not tearing it down".

Tei Abal, as Leader of the Opposition, in an emotional speech said that "my people are sad because they are conscious of the great deal of help that Australia has given to us so that we can be independent".

**Ted WOLFERS**

Two things perhaps I should say. One is, it seems to me, that it all looks very different now. If you are working in
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contemporary PNG, as some of us are privileged to do, then this period we are talking about just does not look as
important or as interesting as it seemed at the time. And there is also a great deal of romanticism about this, particularly
about some of the participants which I don’t believe is justified by the historical records.

But I think, more importantly, it highlights the difference between the various papers we have heard this morning; and
that is the timeframe that you use in talking about decolonisation. Here I would say that my own views have changed
very profoundly, partly because of the influence of real events. There’s a very real sense in which, for many Papua New
Guineans, the process of decolonisation began with the process of colonisation. In fact, the two processes are very hard
to distinguish and I think we are seeing that at the moment in the turmoil of the Southern Highlands, for example.
Secondly, I think the process of decolonisation – if you think about it simply as the getting out process – there is a range
of dates you could pick, through from the Labor Government during the war, post war, certainly the Hasluck period, and
then through into the 60s and 70s. One of the difficulties we face is that we often confuse the decolonisation process
with the actual transfer of executive power which is, I think, a minor interlude in a much more profound process.

There’s a certain sense in that the independence of Papua New Guinea is still evolving. The biggest challenge, in many
ways, when I was working with the Department of Foreign Affairs in Papua New Guinea in the late 70s and 80s, was
still disentangling PNG’s foreign policy and external relations from the Australian connection; and getting Australians
to understand that they were, or at least should be, dealing with an independent country.

I would argue that the threatened ‘shaking free’ process – whatever that means – is still proceeding and that, indeed, not
only are there Commonwealth Government agencies operating directly in Papua New Guinea but that the attitudes, the
behaviour and the arrangements at the moment, in many areas, are more reminiscent of the period of high colonialism
than they were in the excitement of the early 70s.

It is important to have some retrospective view. It is also important to bear in mind the atmospherics inside PNG during
the period we are talking about. Here I am speaking, clearly, as an Australian; but an Australian of a particular
generation, a particular stratum in society that had certain expectations in the 60s. I do not think we should downplay
the overtly repressive atmosphere, or the great deal of intimidating atmosphere of a great deal of government activity in
that period. I do not think we should downplay the negativity that was often found; the overt racism which was endemic
in the Administration and very much part of the decolonisation process. I do not think we should just focus on the
formal transfer of power and forget about that broader environment.

I think when you come to the actual transfer of power, there is something very odd about the whole Australian process.
Firstly, if you go back to the 60s, I would argue that there was a very serious slow down in the decolonisation process in
68-69. Before 68, I was confident that PNG would be independent. The date I had then was 76. I was wrong by about
the year, but that seemed to be what was going on. In 68-69 through to Gorton’s visit in 70, it was very difficult to see
how PNG was going to become independent, let alone when, given the behaviour that was evident on the ground. When
the change came, I think it was still put in a very backward, ‘double whammy’ way: that the definition the Select
Committee came up with about the point at which there would be transfer to self-government was so ambiguous that
nobody really knew what it meant. I think that may well have been the product of a necessary political compromise.

The transfer of executive power documents themselves are worth a careful read. The first thing that struck the CPC
when we looked at them in late 1972 was the very clear lack of preparation that was evident in the Australian end. If
you go back to 1970, the definitions in the Gorton documents were almost incomprehensible until finally Hal Colebatch
dragged out the documents and it became possible to see what it might possibly have been that the Government had in
mind. In 1972 when internal self-government was defined as ‘leaving internal security with the Australian government’,
we asked some simple questions and no one had the remotest idea what it was that the Australian government meant.
Meetings were quickly adjourned and put off into a sub-committee and the idea was quietly dropped because it did not
mean anything at all other than some sort of anxiety about the future. If you looked in the actual transfer of power documents, the conditionalities imposed in so many areas raised serious questions about what it was that we were talking about. The CPC took that up to make the point that it was not really what was understood by ‘independence’ at the time by many people in PNG. Might I add that the difference between many of those conditions and current World Bank conditions are about zilch. So it is worth in fact rethinking what that process was in the light of the realities of independence.

Finally, I would like to emphasise the importance of looking at the final stages of decolonisation. We are trying to sort out in our own minds what the critical period is. Increasingly, I would say that the structures that have mattered in PNG, the structures that have lasted, the things that have made a difference to people’s lives, were very often not the things that happened in the period from 72 to 75. They were the things set up earlier but which were often allowed to wither on the vine. The very frequent demand in PNG now is for re-institution of forms of government and institutional arrangements that were actually discarded or, in many cases, just neglected in the post-independence period.

Decolonisation and independence

Hal COLEBATCH (prepared paper)
(Administrative College 1969-70, 1974-76, IASER 1976-78)

What was being transferred?

As Bill Tomasetti was wont to point out at the time, while we spoke of ‘the transfer of power, it was really a transfer of authority: the right to claim power. That was all that the Australian government could transfer, although as Peta Colebatch pointed out, while the Australian Government could transfer authority over the military by the legal enactments on which our attention was focused at the conference, the extent to which this gave the PNG government power over the military depended on action taken by Australian authorities to build up a civilian defence department and a clear acceptance of civilian control among the military.

As I said at the conference, there were really three discourses about the transfer, overlapping and often not closely examined:

* devolution: the exercise of authority in PNG rather than in Australia. This had been a long-running concern, reflecting the very tight administrative control that Canberra exercised;

* indigenisation: having Papua New Guineans rather than Australians in positions of authority, which need not involve change to the existing constitutional structure;

* democratisation: which was taken to mean the establishment of responsible government, with authority being exercised by ministers accountable to parliament.

These tended to be run together at the time. Relevant Australians assumed that Canberra would only let go if a valid regime was in place in Port Moresby, and this meant elected Papua New Guinean ministers, and if at all possible, Papua New Guinean agency heads.

Conflating these three processes underlay (it seemed to me) Pat Galvin’s defence of Warwick Smith: that the Department of External Territories was simply serving a democratically-accountable minister. Well, up to a point, Lord Copper. The vast majority of the points on which Departmental officials in Canberra exercised power over officials in PNG never went anywhere near the minister, and this was the point made by Keith Mattingly to which Galvin was responding: that the Department did not put to the minister the idea of a World Bank loan for telecommunications.
I would second Mattingly’s point with the banal case of my own appointment to the PNG Public Service in 1969 as Lecturer (External Studies) at the Administrative College. The creation of this position originated in concerns expressed by the University of Queensland about the conditions under which its PNG-resident external students were studying. The University stated that unless the Administration provided an agreed level of support, including the appointment of a full-time lecturer, it would no longer accept enrolments from PNG residents. The Administration was concerned at the impact this might have on the retention of expatriate staff, and it secured the agreement of the Department to the package of support. The position of Lecturer (External Studies) was advertised by the Department, and I was selected. I received a phone call to advise me of this, whereupon I gave notice to La Trobe University (where I was then employed). But no letter of appointment arrived, and when I rang the recruitment section of the Department, I was given a succession of evasive and increasingly-embarassed replies. Eventually I said ‘packers from the Department of Supply are coming on Friday to pick up my personal effects and transport them to PNG; please decide by then if there is a job for me to go to’. This produced the letter of appointment.

I later discovered that at a late stage in the process, someone in the Department had looked at the job description for the Lecturer (External Studies), noted that among the duties was the recruitment and supervision of tutors, and had the bright idea that since the University of Queensland had a rank of Senior Tutor (between Tutor and Lecturer) it would be sufficient for the external studies function to be carried out by a Senior Tutor. That the Administrative College did not have a rank of Senior Tutor (and that its Tutor was a quite different job to the university position of the same name), that there was an agreement with the University of Queensland to appoint a Lecturer, and that the job had already been advertised and interviews held, counted for nothing: someone had discovered a way to show those blokes in Port Moresby who was boss and save $500 a year in the process. The accountability of the Minister to the Australian Parliament had nothing to do with it, except that it validated this constant, niggling exercise of bureaucratic power in Canberra. If Pat Galvin wants to believe that this was Westminster democracy in action, he is free to do so, but I doubt that he’ll find many social scientists who agree.

**Self-government and independence**

Bill Morrison’s paper and presentation asserted that once PNG was self-governing, it would have to proceed to independence as soon as possible. He did not make it clear why this was so, but it is worth pointing out that New South Wales was self-governing by 1842, but it was not independent (in a legal sense) until the Statute of Westminster Adoption Act of 1942. There are all sorts of examples - from the Cook Islands to the Isle of Man - of self-governing dependencies. Whitlam et al. wanted to be shot of the place and Somare was anxious to move to independence before the deal on Bougainville and/or the coalition fell apart. This may have been good politics, but there was nothing inevitable about it.

**decentralisation**

It seems to me that the discourse on decentralisation changed course between 1970 and 1974. I had become interested in decentralisation in my time at the Administrative College in 1969-70, arising out of field research in the Western Highlands during the 1968 elections. Then, my concern was about the frailty of the district as an organisational unit, with increasing professionalisation of the functional departments (and better communication with Port Moresby), a perception of the diminishing ability of the DC to achieve coordination, and the complete disconnection of the structures of political representation (MHAs and local government) from the operations of government at the district level. I argued that there was a need to constitute a location in which the different elements of government at district level could at least meet and make commitments to one another about their activities. John Watts (Western Highlands Regional), who was one of the people with whom I discussed this, raised it in the House in 1970, but there was little interest in the Administration.
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I went off to study decentralisation in Kenya, and when I came back to the Administrative College in August 1974, it seemed to me that there was little interest in strengthening and integrating government structures at the district level and below; the decentralisation discourse was now about federalism. I was told that the issue was now framed by the CPC, and that any suggestion that PNG should have less federalism than Australia would receive a very cool reception. (This raises questions about Ilinome Tarua’s presentation of the constitution as a Papua New Guinean construction: certainly, it was put together by Papua New Guineans, but as a political scientist, I wonder whether they tended to reach for bricks of Australian manufacture.) Essentially, the question was driven by Bougainville: the Bougainville leaders would not accept anything less than some form of federalism, and the CPC assumed that this would have to apply to the rest of the country. (It would be interesting to know if the CPC looked at the possibility of a distinct constitutional status for Bougainville, like Northern Ireland 1920-70.)

The consequence was that the earlier concerns about fragmentation and discontinuity at the district level and the concern to create a space for integrating governmental activity dropped off the agenda. Anoher discourse, about separation and boundaries, took its place. John Ballard and I prepared a report for Philip Bouraga in late 1974 which raised questions about strengthening organisational capacity at the district level, but there was little interest, and to the extent the district level organisation was thought about, it was in terms of dividing the work between a provincial government and a national government.

Sir Ebia OLEWALE

I would like to say a few words on the Select Committee on Constitutional Development that was established in the House of Assembly.

The Australian government invited Paulus Arek to go with an Australian delegation to New York for the General Assembly of 1968. On his way back he announced that he wanted the House of Assembly to set up a Select Committee on Constitutional Development. In 1969 this committee was established. Its first task was to canvas the whole of PNG, so we traveled to every district, sub-district, of the total country. Then in 1970 we had a program to go overseas. We were divided into sub-committees so that some would go to Pacific to discuss with governments there what constitutional process had taken place in their countries, and some would to Asia and Africa. I was in the team that went to Asia and Africa.

On the eve of our departure we came down to Sydney. Our Chief Justice then, Sir Allen Mann, sadly passed away in Brisbane, so the whole committee flew from Sydney to Brisbane to attend his funeral, and on the same day returned to Sydney. We spent one whole day in Sydney. Gough Whitlam invited us for lunch with him and in the afternoon we had a meeting with the Australian Prime Minister, John Gorton. The Papua New Guinean Committee had decided that we would not allow Australian officials who were official members in our House of Assembly to go with us for that meeting with the Australian Prime Minister. They were not very happy that we had excluded them. At the meeting with John Gorton we told him that we wanted him to go up to PNG which he subsequently did. We also told him that we wanted changes in the Administration, the way we wanted it to happen.

Then we went first to Sri Lanka, then India. We flew to east Africa and visited Tanzania, Kenya and Uganda. In west Africa we went to Nigeria and Ghana. In fact, we were in Ghana when Dr Busia was installed as Prime Minister. From there some of us went to Rome, some to London with me.

On our return we compiled our report. The Constitutional Development Committee made a very good report and many of the symbols that we now have, like our flag, our coat of arms, were formed on made when the Constitutional Development Committee was working. It was this committee’s report that went further when we were re-elected in 1972 and the Constitutional Planning Committee was formed.
In the face of all this academic and professional analysis and summary, my comments might be a little irrelevant, or perhaps irreverent! To explain my association with Papua New Guinea: I go back to mid-1965 when The Herald and Weekly Times had bought the Post group of newspapers and commercial printing and other activities from Pacific Publications. Editorial were fighting management, as they often do in newspaper. Sir John Williams, thinking I had experience in both areas, sent me to PNG to ‘keep an eye on things’.

Just before I left, we received a letter from Bert Goodsall of Burns Philp. He was threatening that all the island traders would pull out their advertising and commercial printing from the Post group of newspapers because the Post had published a story – which was accurate – that Burns Philp had been committed for selling methylated spirits to the indigenous people in Rabaul. Burns Philp objected to this. Sir John wanted me to go to PNG and run a campaign against Burns Philp while he would have the Burns Philp balance sheet analysed in parliament to show what these mongrels were pulling out of PNG. I advised him against it. In the end, he sent a letter which was quite historic in newspaper terms:  

Dear Mr Goodsall, I'd rather be out of newspapers altogether, and in particular Papua New Guinea, than allow any advertiser to dictate editorial policy. We hope the paper serves the community well. I’m writing this letter under my signature because I’ll personally take responsibility for whatever you want to do. That was the spirit in which I went up to the territory.

At the newspaper we had the usual balance between entertaining and informing and so on, but we were also very conscious that we were taking part in the move towards a democratic society. In that context Bernie Ryan, a Burns Philp manager, rang me up one day and asked me if we could send a journalist along and write a story about the road that went past his house above the Yacht Club. I thought this would stand up, so I sent a Papua New Guinean along. Bernie rang me half an hour later and told me that his wife had never been so insulted: I had sent a black person. (He later apologized.)

Now this fits in somewhere to your considerations and particularly, Donald, your reference to perceptions and exchange of experiences.

The first thing that struck me in PNG was the very poor telecommunications and telegraph services. As people would know, lines disappeared when a bit of cloud came over, and we could not get our stories back from Lae and Rabaul for printing. The whole community suffered, so we launched a campaign on telecommunications. That was interesting because I remember what Mr Whitlam said about ministers making decisions and public servants just doing, more or less, what policy dictated. I found that Bill Carter who was running Posts and Telegraphs had, in fact, put in a fully documented submission to the Department of Territories in Canberra for a World Bank loan for telecommunications. When I checked up on this, I found that that submission was the only one that had been submitted by any department in PNG, for a World Bank loan. The World Bank had been in PNG and was coming back. However, this document had been ‘buried’: Warwick Smith and other bureaucrats felt that communications in PNG were a luxury that PNG could not afford, and at any rate, this would benefit mainly private enterprise which was well able to look after itself.

When the World Bank arrived, I was in a position to meet members of the mission and they hadn’t even heard of a submission regarding telecommunications. The mission agreed to look at a submission if I could get it to them. Bill Carter got it to them very quickly, and the rest is history.

It was a big campaign. I remember that it was raised in parliament and everywhere else. Frank Martin in the Assembly was one of those who backed the campaign, saying in the House that if you wanted to make a call from Wewak to Madang, you may as well poke your head out of the window and shout. Telecommunications were so bad.
The World Bank loan was approved within twelve months of the Bank having got the submission, which had by-passed the Department of Territories. I must say, however, that when it looked as if the loan was going to be approved, Barnes came out with a press release to say how important telecommunications were in the developing territory.

On another matter: I was with Les Johnson in Melbourne on the night that approval finally come through for him to go back to PNG to take over as Administrator. (A great period of stability and common sense was ushered in, with Sir David Hay and Les Johnson working together.) Les told me then that, on many occasions, submissions that had to go through the head of department never got to the minister. So there were times when policy was not dictated by the ministers or the government.

I might say that we wrote an editorial criticizing Warwick Smith. I’m not sure if Sir David Hay would remember, but he did suggest to me, when he was Administrator, that we should be criticising the Government, and not a departmental head. My feeling was that that is acceptable, so long as the departmental head is not making statements of government policy.

On the United Nations missions, I was quite surprised, really, about the slow down that Ted Wolfers mentioned from 1980 – I think you said, Ted – because six months before Harold Holt disappeared in 1967, I called on him in Canberra. I was then federal roundsman and caused him a lot of problems, along with other people. He told me then that the Australian government was fed up with the pressure from the United Nations and that it would get out of PNG as quickly as it could. I mentioned this in a toast to the Papua Club in Port Moresby and I was amazed that people could not believe it: they did not think it was possible. (I did not say that the Prime Minister had told me: I merely said it was my expectation.)

It was more than ten years, I think, that the UN was saying that Australia must be guided by the Charter of the Declaration of the Granting of Independence to colonial countries to enable their people to enjoy freedom. It irked the UN that the Trustee Council would report only on New Guinea and not Papua.

It was interesting to hear how the national flag and the anthem came up, because in one report from the Trusteeship Council, they claimed the responsibility for sowing the seeds of that idea. As you no doubt know, the UN Trusteeship Council, was constantly pressing the Australian government to proceed to self-government and independence. In my view, it always threw a bouquet and said how well Australia was doing; and then it came up with a cabbage to say that it must work a lot faster, and that things weren’t happening properly. It repeatedly urged Australia to make up for lack of expertise by going to UN agencies such as the International Labour Office (or should this be Organisation?), the Food and Agricultural Organisation, UNESCO, WHO. I think the Australian government was very loath to do that, but as late as 1968 the UN Trusteeship Council reported that while it appeared that the people of the Territory did not feel ready for self-government, the mission felt that this must not be used as an excuse for delaying progress towards self-determination.

To conclude on a personal note, if I may, I felt that the move to self-government in 1973 with a firm hand and with what I believe was the unquestionable integrity of the Pangu Pati was a most wonderful thing. I think the Australian people expected bloodshed. There was no such thing. The members of the Pangu Pati at that time should be thanked for that. Bill Morrison mentioned about the rush to independence two years later, and I feel that was a weakness that could have, with foresight, been overlooked, because the infrastructure was not there.

The four-man eminent persons’ group which visited PNG in November 2000 to report on military reform painted a horrific picture of corruption and mismanagement among the military, the public, the politicians and the business people. I just wonder, in retrospect, did the UN wall of pressure achieve its objective to bring enjoyment to the people of PNG.
I would like to respond to the remarks that were made about the distinguished Australian public servant, George Warwick Smith. I do oppose in the general and in the particular.

In the particular, I refer to the telecommunications loan from the World Bank. I have no recollection of the earlier part that was mentioned. However, to say that the loan was obtained from the World Bank, by-passing Canberra, is simply untrue. I want to put the record straight: Colin McDonald would remember, and I certainly do, remember sitting in a conference with George Warwick Smith and several other officers whilst the papers relating to the loan were finally checked before they went over to Foreign Affairs and Treasury, and then to go to Washington.

On the general – and this relates to a remark that was made earlier – in terms of the handing over of power, I well recall George resisting recommendations from Port Moresby to transfer power to Port Moresby on the basis that the request amounted to the transfer from elected ministers in Canberra to non-elected officials in Port Moresby. (And, by the way, a transfer from white Australian ministers in Canberra to white Australian officials in Port Moresby.) This was in the context of the development of the notion of ministerial members and administrative executive council, and the like.

Again, on a particular point, George Warwick Smith was well aware of the issues of high principle that underpinned a number of actions that were being taken by the Australian government in its relationship with the Administrator and the Administration. Now that relationship was irksome, at both ends; but especially irksome, I have no doubt, at the Port Moresby end because there seemed to be this brake always in Canberra.

I would also say, and colleagues who said it with me in the Department of Territories, and the Department of External Territories before that, that George Warwick Smith – a very firm and very strong man – was also a stickler in terms of the relationship between the public servant and the minister. Again, anecdotes are probably the fuel for these fires, but I well recall again in George’s office the conversation between the minister in Port Moresby and George at this end. (I can’t remember whether the Administrator was in Canberra at that meeting or in Port Moresby.) The argument ran: the minister felt that X should be done, and the Secretary arguing strongly and at length, and over and over again; and the minister saying no, he felt that in this case the advice from Tom Ellis – or whoever it might be – was correct. In the end, the Secretary said thank you, Minister, and hung up. Then we were all told to turn ourselves around and do what we had to do. That has always remained with me as one of the best examples of the system under which we work. If the public servant puts the view strongly and vigorously to the minister, and the minister in the end finally says get stuffed, then you did what you had to do.

Others will have different positions on George Warwick Smith, but I think it is wrong to damn the man without hearing the other views, especially of those who worked with him and respected him and learnt considerably from him. I say that with due humility as someone who, like George Warwick Smith, later became a departmental head.

WHITLAM

Might I make an admission and make a comment. The admission is that I was speaking with David Hay during the recess, and he pointed out that I was wrong in saying that Gorton and he had carried handguns in July, for the meeting with the Mataungans. David said that he was not carrying a handgun. I regret having said that he did. I was fortified in making a comment on this because Ian Downs, in his book, pointed out that Gorton had carried a handgun there, so I suppose that’s true.

The other thing refers to George Warwick Smith and the select committees on constitutional development. (This is partly what Ebia Olewale has reminded me.) The Select Committee on Constitutional Development – here I’m quoting from the Whitlam government, I think it was right – nobody has said since that it was wrong – in 1967 had recommended
that the members whom the House had elected to serve on the Administrator’s Executive Committee should be known as ministers. In the 1968 Act the Government had substituted the term ‘Ministerial Members’. At the interview with Gorton, which Ebia has referred to, the Committee pressed for the term ‘Minister’ to be restored; and Warwick Smith pressed for ‘Ministerial Member’ to be retained. Gorton, impatient with these semantic differences, sought an opinion from the First Assistant Secretary of the Department, an Englishman who had served in Cyprus before its independence. This pundit observed that it did not matter what they were called; he suggested ‘The Black and White Minstrels’.

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C The transfer of administrative power: the 'gearing up' program and the transfer of powers. How was power transferred or devolved - and to whom?

THE TRANSFER OF ADMINISTRATIVE POWERS

Alan KERR

I am listed to talk about the ‘gearing up’ program, but beforehand, if I may, I’d like to refer to the time when I had the honour of being the Executive Officer to the committee that Ebia talked about. Tom Leahy and Ebia were distinguished members of that committee run by the late Paulus Arek. This extraordinary committee had Michael Somare on it and Tei Abal and a number of other distinguished members of parliament in Papua New Guinea. I took over the very day that they came to Sydney. There was a very heady atmosphere, all sorts of things were happening, and they had kindly agreed to my appointment.

I travelled with that part of the team that went to Africa. Tom Leahy gave me a dreadful time over there, but we enjoyed it. The committee found a number of very interesting issues. One of our committee members asked an African gentleman in Kenya what had happened there to cause self-government to come about. He replied that this happened when they had a majority of their people in the parliament. This came as a bit of a surprise to the Papua New Guineans because in fact since 1964 they had had a majority of members in their parliament. It was an indication, I guess, of the fact that the power was there; it was a question perhaps of how it could best be utilized.

In 1964 which was the first House of Assembly, the first real move away from the old Legislative Council, that house set up a Select Committee on Constitutional Development, headed by John – later Sir John – Guise. They reported in 1967 on the structure and form of the House. Inter alia, as Mr Whitlam has mentioned, they talked about ministers and assistant ministers. They were in fact created but they were called Ministerial Members and Assistant Ministerial Members. They had these arrangements which John Greenwell and others have mentioned, approved by the Federal Minister, to assist in the government of Papua New Guinea and in particular to take part in the formulation of policies and plans and proposals for expenditure associated with the activities of the parliament. They were to represent the Administration in the House of Assembly and they were to make representations to the Administrator’s Executive Council, which was the embryo cabinet.

These provisions actually lasted until Independence. My understanding is that they came from Fiji – they were the way in which Britain transferred power to Fiji. However, they really did little more than appoint and allocate functions, and there was the problem of trying to encourage Ministerial Members and Assistant Ministerial Members to take part in the government. Some took on their powers with a great degree of enjoyment and worked very well; others were a bit loath to do it. Perhaps that is a reflection of the authority or lack of authority which some of them had with their departmental heads, who of course were all European.

Now Canberra was closer to Port Moresby than London was to Nandi, especially after the telex was installed. We can all remember telex messages as long as this room, going backwards and forwards about what should be happening. But there was, as Pat Galvin has pointed out, a real fear in Canberra that Australian ministerial control would go through to expatriate public servants in Konedobu. In other words, Canberra control would become Konedobu control. But the pace was developing. The Pangu Pati had emerged in the 1968-72 House and there was criticism, funnily enough, of the then Opposition. The Administrator, Sir David Hay, was concerned about the lack of decision-making opportunities for Ministerial Members and Assistant Ministerial Members.

There was a feeling in Canberra, too, that maybe power should be transferred in some sort of equation with the capacity of PNG to raise the revenue; so that if they did have a portfolio for which most of the revenue was raised in PNG, the
My job was over. I came back to the Department, and we started work on what we called the ‘gearing up’ plan. In a
letting them indicate when their views should be known.

The Minister then started talking about helping PNG move towards Self-government, rather than just standing back and
officials and politicians about the shift of power in these various functions.

Again, external influences were coming to bear. Michael Somare had a wide electorate with extraordinary differences,

193. Some of them were from the sublime (like a monitoring station on top of Mt Wilhelm that was run by the
meteorological bureau to measure the degree of radioactivity around the world) to the defence force. There was this

happen if we were to progress towards self-government and independence. These events were listed across the top of
the matrix. Down the side were listed every possible function of government that we could think of – I think we got to

At this stage the handover of power was in a pretty messy state. Some ministers, as I said earlier, had practically
everything that their portfolio allowed of them. Others had very little. Some, in fact, started to be – at least in a de facto
sense – responsible for everything other than maybe one or two things. So things were held back rather than passed
over. Federal government policy was that they were awaiting the views of the people; but we were all on the road to
self-government. The ALP talked about target dates. The United Nations was asking for a timetable. The House of
Assembly said that it was the will of the PNG people, not the Australian government.

In November 1970 there was an outline put to the House of Assembly of the Select Committee’s views, and in January
1971 the Select Committee toured everywhere in the then Territory. One of the things we did was issue a little pamphlet
ahead of our trip, which was in English, Pidgin and Motu, and we described what we thought the flag should be – we all
remember the old flag? And the name – Pagini. This got universal opprobrium when we went around. (I should say that
that first flag was changed. It retained the same symbols but became a much more acceptable flag.) I can remember
meeting after meeting when dear gentlemen would rise and for the first twenty minutes tell us what a distinguished
group of people we were etc etc (I’d say to Ebia: *Yu wet: tok tasol.* Then of course we would be told what an appalling
group of people we were: we had no idea of what they thought etc etc. However, we made that tour, we came back and
the Committee made its final report in 1971. It was said then, among other things, that the people were still reluctant
about the pace of change and the move to self-government. But we felt that Self-government would probably come in
the next House of Assembly – so it was quite a long way away. However, the pace was building up so much that the
‘gearing up’ program should be put in place to make sure that the powers were there if the people decided that that was
what they wanted. Someone this morning said nobody really knew what that meant, but in a sense it was a compromise:
there was a lot of pressure, but there was equally a lot of resistance in PNG itself. The Committee felt that that was a
way of – not exactly breaking the nexus – but perhaps easing some of the tension.

As is the wont in history, there was a bit of a sea change after the Committee had reported. In January 1972 Labor came
in in Australia, Peacock was appointed, Somare who had led the Pangu Pati to a coalition in that House became the
Chief Minister. He was, in fact, formally the Deputy Chair of the Administrator’s Executive Council, but he became
widely known as ‘Chief’. As we all know, they both got on extremely well together. As someone has mentioned earlier,
the Minister then started talking about helping PNG move towards Self-government, rather than just standing back and
letting them indicate when their views should be known.

My job was over. I came back to the Department, and we started work on what we called the ‘gearing up’ plan. In a
sense, all this was a matrix, if you could call it that. This consisted of all the events that might occur between that
date and Independence which, at stage, was just a question mark. Things like when the Australian Federal Parliament
met, when bills had to be drafted to be introduced, when the House of Assembly met, when acts of self-determination
had to be made, when the UN committee of 24 met – all those sorts of key dates by which time certain things had to
happen if we were to progress towards self-government and independence. These events were listed across the top of
the matrix. Down the side were listed every possible function of government that we could think of – I think we got to
193. Some of them were from the sublime (like a monitoring station on top of Mt Wilhelm that was run by the
meteorological bureau to measure the degree of radioactivity around the world) to the defence force. There was this
extraordinary range of functions down the left hand side. We gradually began a series of detailed discussions with PNG
officials and politicians about the shift of power in these various functions.

Again, external influences were coming to bear. Michael Somare had a wide electorate with extraordinary differences,
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from the highlands to the islands. Mr Peacock had the Federal Parliament to contend with, and some of his colleagues and certainly some of the Opposition were pressing for all sorts of different things. There was the UN, there was the ALP as well. In the 1972-76 House, again following the pattern, on Michael Somare’s motion, a Constitutional Planning Committee was set up. It was headed by Father John Momis. They had wide powers to recommend PNG’s constitution to form internal self-government. At the same time the House also moved that self-government should come in on 1 September 1973, or as soon as practicable thereafter. So there was a date to put into our ‘gearing up’ plan, but it had some ambiguity about it.

In January 1973 there was a new Federal government. Minister Morrison started publicly talking about Independence. This shocked a lot of people in PNG, as he would remember, (especially at the Papua Club and its various equivalents!), but he said the Federal Government would abide by the self-government timetable. One important thing that Mr Whitlam’s Government did then was to look into government. They announced that the federal Department of Territories, as it then was, was to close down and let self-government take over. So here we have an extraordinary impetus: movement towards Independence was now being spoken of, and the Department was to be closed down.

In the meantime there were still all these powers to be transferred. Some of us in the Department went to the Government to say that while Foreign Affairs was going to take over from the Department of External Territories, and the aid side of it was going to go to the new aid agency, there was still the need for some form of departmental rump to be left to continue to perform these transfers. The Government agreed and the Papua New Guinea office was set up, headed by my colleague John ?. I was also assigned to that office. The office continued discussions with the emerging Papua New Guinea people in terms of transfers.

John Momis’s Committee pointed out that they did not want these powers transferred until they had made recommendations to the parliament on the proper structure and the proper functions of these powers in a self-governing PNG. While this was reasonable, we had a lot of pressure. If self-government was going to be meaningful, PNG had to have some form of power over a wide range of functions that were still in dispute. After discussion and negotiation, the terms of reference of the Constitutional Committee were changed to provide for a two-stage self-government. December 1973 a ? was to be completed when the Constitutional Committee was ready and had presented its constitution.

Now at that stage the Australian government had started talking of Independence possibly by 1974. All powers had now been transferred, except for a few functions which were held back. The Papua New Guinea Act was amended in 1973 for the High Commissioner to replace the Administrator. Tom Critchley seized the day: he was the first High Commissioner. That position was to act on the advice of the PNG government. That happened at Self-government and Michael Somare was able to tell his people that nothing really had changed at that point in time. PNG had all those powers, apart from defence, foreign relations and, at the request of the CPC, things like the Supreme Court, Legal Aid, the House of Assembly and electoral policy matters were kept in reserve.

The CPC announced that its report was not ready, as it had planned. The idea of two-stage self-government lapsed, and Michael Somare then announced that he would move in the parliament for Independence on 1 December 1974. Australia welcomed that, and we all planned an autochthonous constitution – a constitution that would spring up out of PNG. The idea was that the Papua New Guinea Act would just fall down on Independence Day.

Somare’s motion was, in fact, amended by the House of Assembly: that they would move to Independence as soon as the constitution was enacted, and then the actual date would have to be endorsed by the House of Assembly. So, even at that late stage, there was some uncertainty about that date.

The UN asked Australia to consult Papua New Guinea, particularly on the issue of the two territories, Papua being the non-self-governing territory, and New Guinea, the Trust Territory. The UN then recognised that a vote of the House of Assembly would be an Act of Self-determination. That vote took place in June 1975 for PNG to be independent on 16 September 1975. We had also transferred, in a de facto way, some defence powers and some foreign affairs powers. Our Minister was able to say that PNG was virtually independent, and Michael Somare was able to tell his people at Independence that really nothing had changed. Sir John Guise, as perceptive as ever, said among other things, that there were people in this country, because of their remoteness, who had known no other state than independence.

Thank you for allowing me to give a personal explanation of those heady and exciting times.

Sir Alkan TOLOLO
I’d like to comment on a number of issues. I’m grateful that two former Administrators are here. I worked closely with
both of them during their time. I’m also grateful that Mr Whittlam is present. I worked with him too. I remember, and he does too, a demonstration in Port Moresby about wages.

Let me go back to the idea of self-government and independence. The way I look at it, it was ‘cut’, the ‘meat’ was given to Papua New Guinea. Not many people were fully aware of the implications of it, but we went for it. For those of us in the public service, we had to toe the line. Instructions came out from the Administrator’s office for us to cooperate and try to explain the concept throughout the public service. There was an atmosphere of excitement, but there was nothing that they could compare with. The problem that we faced was that there was insufficient information communicated down from those Ministers of the Parliament to the public servants. There were young public servants who were mostly trained by Australians. There was only a handful of them. The training problem we had was limited, and not many people were exposed to what was happening. We had to drive hard to try to get enough information so that we could start conditioning the public servants to think that we were becoming a self-governing country.

I think that the time and preparation we got was too short. I would call it a ‘pressure cooker’ approach. I remember being involved in the ‘E’ course where many Australians were coming to PNG and training to become school teachers. That was one ‘pressure cooker’ course that we mounted. It helped us Papua New Guineans to be able to speak better English – that was one of the achievements. But the actual preparation of people to start thinking about independence was limited to politicians only, I would say. Very little trickled down to those people who were the implementers. I was one of them. We had to prepare our people so that we could teach them through the school system. We had to train teachers to bring the independence message down to our school children and also to communicate effectively with others in the community. The ‘tractor’ of government was not clearcut: it was always going from the top down to the grass roots. That’s why we had this Matauangan Association starting: people were wanting to participate in the governing of the country as a whole.

The weakness was that the preparation was too short and not enough of it. Had we had the time to prepare our people for things to come, probably we would have overcome many of the problems that we are facing right now.

There was too much emphasis on politics and very little emphasis on economic development and other sectors like health and education. That was one of the problems we faced at the time. That’s why we mounted this ‘E’ crash course for Australian teachers to teach our people in the school system. It was an important program, I must say. We did benefit from it.

As I sit here and listen to all the comments that have been made today, I am aware that none of this was exposed to any of us at the time. We went through the system: we went to the Administrator and the Public Service Board to get our instructions. It was often difficult to interpret some of those things. And as you know, the people in the provinces had hoped to get a lot more information out to the provinces. They did not get that. At the time I was Director of Education. We had to work out how to inform the workers who were going to help implement the program of change from self-government to independence.

One final comment. Sir Michael who was my classmate in 1962 doing a course in Sogeri said to the 25 of us in our class, ‘I will become a politician and the first Prime Minister of Papua New Guinea.’ He said, ‘But you don’t have to be a politician. You will be the implementers of policies.’

AUTOCHTHONOUS CONSTITUTION

Ilinome Frank Tarua CBE (prepared paper)

“I am going to draft the autochthonous Constitution of Papua New Guinea” beamed Joe as I entered the library of the Department of Law at Konedobu. Joseph Cyril Lynch was setting himself up in the library from which he was to operate in doing his drafts of the Constitution. My own office was next to the library. The Political Development Division of the Department of the Chief Minister and Development Administration shared the same building.

Up to that moment “autochthonous” was not part of my English vocabulary. My first reaction was that it was some new word Joe had invented. It sounded Greek to me. Some dictionaries explain that “autochthonous” means “aboriginal, indigenous or native to the soil”. The noun “autochthonism” means birth from the soil of a country. So I came to understand this strange new word to mean that the PNG Constitution was to be conceived and made in Papua New Guinea.

Intentions of PNG leaders
Before Joe added autochthonous to my English vocabulary, I was more familiar with another adjective to describe and express the intentions of the Papua New Guinea leaders of the type of Constitution they wanted. When I joined the Political Development Unit in the Office of the Chief Minister in August 1972, Michael Somare and others had been talking about a home-grown Constitution in public and private pronouncements.

The word “home-grown” encapsulated the wishes and intentions of PNG leaders to have a Constitution developed and made at home. The word emphasised the intentions determinations of leaders to be different from what had happened in some African and Asian countries up to the 1970s. The Constitutions of India, Ghana and Kenya were negotiated in London and promulgated in London. Those countries gained their nationhood through the legislation of another country. Australian political leaders were very much in agreement and supportive of the concept and all the ramifications of a home-grown Constitution for PNG. With both leaderships across the Torres Strait settled on this, PNG moved on to developed its own Constitution.

In this paper I reflect upon the characteristics that in the end, indeed, made the Papua New Guinea Constitution a truly home-grown Constitution.

**Contents of the Constitution**

When political leaders were talking about a home-grown Constitution in the early 1970s, they were in fact talking about a Constitution to be developed and promulgated in PNG. What the leaders were really saying was that, apart from its promulgation in the country, the contents of the Constitution must be those that have been conceived and accepted by Papua New Guineans. Since the concept of PNG as a country was originally an introduced idea, it did not matter to the leaders if the concepts for the contents of the Constitution originated from outside the country. This did not matter because the idea of a national constitution was itself a foreign concept. It was, however, crucial to them that the contents of the Constitution were what Papua New Guineans chose and wanted.

**Make-up of the Constitutional Planning Committee**

In reflecting the intentions of the leaders to develop a home-grown Constitution, the House of Assembly set up the Constitutional Planning Committee in June 1972 to assemble proposals for the Constitution. Even membership of the CPC reflected the strong desire of PNG leaders to make a truly home-grown Constitution. All members were indigenous. Even its executive officer was a Papua New Guinean. However, as the national Constitution is a foreign idea there was a need for outside legal and political experts to advise. So some overseas temporary experts were called upon to assist and advise the CPC. However, these experts were on short term appointments and for specific assignments. These outside experts came to provide their advice in Port Moresby. The permanent team consisted of a Papua New Guinean (Bernard Narakobi), two Australians and a New Zealander. The two Australians, John Ley and Ted Wolters, and New Zealander, David Stone, were long-term residents with genuine understanding of Papua New Guineans and with whom Papua New Guineans felt they could express themselves without reservation.

**Inputs of the People only**

The CPC carried out its assignment in Papua New Guinea and did not go outside the country as a Committee to obtain ideas for the home-grown Constitution. It travelled extensively in PNG consulting the people on what they wanted in the Constitution. It also received over 2,000 written submissions from the people. This resulted in a detailed Report by the CPC.

**The Somare–Guise Proposals**

In response the Somare Government produced its own Report. The Somare-Guise proposals were conceived and produced to ensure that any government can operate in the real world at independence day and in the future. Two main changes they made were the Head of State and citizenship.

**Legal and Political Advisers**

The Somare-Guise proposals were endorsed in Cabinet before tabling in the House of Assembly. Michael Somare and his Ministers were advised by their in-house legal and political team of advisers. Like the CPC, the legal and political advisers were indigenes (Nahau Rooney, Meg Taylor, Ilinome Tarua) and a long-term resident (Tos Barnett) who had the fullest confidence of Somare and Guise.

In August 1974, the Report of the CPC and the Somare–Guise proposals were tabled in the House of Assembly. The
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CPC Report was debated and accepted as amended by the Somare-Guise proposals and formed a blueprint for drafting a home-grown Constitution. The drafting instructions to the First Legislative Council and were formally issued to him on 11 March 1975.

Tensions
There was some tension between the CPC and the Somare Government. It was perceived that there was also intense rivalry between John Ley (legal adviser to the CPC) and Tos Barnett, the in-house legal adviser to Michael Somare. It was thought by some that wrong or bad advice to PNG leaders would result from this. I recall being intensely grilled by Gus Smales (political journalist) in an NBC radio interview about this perceived rivalry. My response was that I was of the view that Tos and John believed strongly that the advice they were giving to their respective superiors was right and honourable and I did not see any problems with that. On my return home that night, I had a telephone call from Chief Justice Frost, with complimentary remarks on my standing firm on the views I held of the alleged rivalry.

John Momis also started name-calling Papua New Guinean advisers in public. In his usual colourful English, he called indigenous advisers flower pots. His name-calling was a temporary slip and I did not think Papua New Guinean advisers were hurt. Maybe they were surprised at such name-calling by a highly respected and venerated countryman. At least none of the advisers to my knowledge took these public comments any further.

Constitutional Draftsman
Consistent with the concept of a home-grown Constitution, the person drafting the Constitution should be somebody who called Papua New Guinea home in 1975. This meant somebody who was born and raised in the country or someone who had lived in the country for a long time. Because of the nature of the document, the person drafting the Constitution had to be a lawyer with the experience and expertise of drafting Constitutions for nation states.

In early 1975, there was a handful of Papua New Guinea lawyers. With the exception of Joseph Aoae, none had been in practice for six years. More importantly, none had specialised in drafting national Constitutions or even in drafting legislation. So there was no expert or experienced legal draftsperson among this small band of indigenous legal eagles. It was inevitable that no Papua New Guinean lawyer was appointed to draft the Constitution of his own country.

To comply with the wishes of the political leaders in having an autochthonous Constitution, the fallback position was to look at lawyers who had been in PNG for some time and, more importantly, with the experience and expertise in drafting legislation. There were two or three who fulfilled these requirements. Of these, Joseph Cyril Lynch had the most experience in drafting of legislation. He was highly respected in Government and private circles for his diligence, hard work and timely outputs of numerous bills, regulations, bylaws etc. Even Michael Somare and his colleagues were accustomed to the high quality of drafted bills and regulations that came through the House of Assembly from the penmanship of Joe Lynch.

Joe Lynch was the right appointment for this job as I came to find out during the consideration of the Constitution. In my view Joe was an honourable and dedicated professional draftsman. Being the First Legislative Counsel, he had the necessary support staff and facilities to back him up. Any other person would have meant extra expense and unnecessary delays. Max Allwood, the Second Legislative Counsel, assisted Joe in drafting Organic Laws, and other subordinate laws in preparation for independence, whilst the proficient steno-secretaries at the Legislative Counsel’s Office produced timely drafts and redrafts of material that Joe and Max persistently produced.

Made in Papua New Guinea
To keep faith with the idea of a home-grown Constitution, the House of Assembly was not regarded as the appropriate body to consider the Constitution as it was established in the colonial era. However, since members of the House were representatives of the people, it was ideal, convenient and practicable for them to consider the Constitution and enact it. So the members of the House decided to convert themselves into a Constituent Assembly to consider the PNG draft Constitution.

The Constituent Assembly met from 23 May to 26 August 1975. I had the privilege and honour of working closely with Michael Somare, Ebia Olewale, Tony Elly (Clerk of the Constituent Assembly) and Joe Jynch on the passage of the Constitution. The meetings went smoothly and the Constitution was approved by representatives of the people, for the people and by the people on the soil of their own country. The Constitution was born out of a peaceful process and is indeed an autochthonous or home-grown Constitution.
I would very much like to support the words of Alkan Tololo. I think that one of the greatest problems that New Guinea faced in this rush towards independence was that it was sheer politics. This morning we’ve been hearing it’s all politics, it’s all politics. There is very little back at the grass roots as to what we were doing there. There was very little encouragement of the public servant to become a public servant. There was no great rush to try to get indigenous entrepreneurs, or private enterprise. The whole cup was filled with politics.

I always lived in the country, I never lived in a town all the time I was in PNG. I was amongst the villagers, the people. My power base was my ability to talk the language. And I felt that everything was on track. We had major roads being built, universities and high schools were built, the E course went ahead into the villages, it was a marvellous partnership between us all. I was growing peanuts and I had cattle and coconuts. We were giving out coffee seeds. We realised that in order to be part of New Guinea after independence that the people had to feel on equal terms with us. That’s what we were after.

I was in local politics for 18 years and I walked the mountains electioneering – there were no roads. I saw five thousand people digging roads with sharpened sticks in order that their people could get their produce into the markets, the towns. These were the private enterprise people that we should have been pushing. The great tragedy was that we didn’t have middle class private entrepreneurs; we didn’t have middle class public servants. If anything happened to the government, as it did in other countries such as Italy and France, everything would collapse because there was no tradition of public service to carry things through. We weren’t allowed at that time, and I think, if I may say, that that was the rock that we fell on.

I would like to give my impressions of when I arrived in 1974. I have just heard Alkan Tololo say that we moved too quickly, that there was too short a period to independence. I think rather it was a case of not preparing for independence early enough. I do believe that once you have self-government, unless you move quickly – as Bill Morrison has told us – it will be very difficult to have a smooth transition to the independence stage. It was unfortunate that there was a bit of a hiccup over the Constitutional Planning Committee and what Constitution there would be, but the final decision had to be taken by the Papua New Guineans themselves in the House of Representatives.

When I say that we should have started earlier, it is not easy to find what were the reasons we did not. There was a slow realisation in PNG, by the Australian community, about a world that was changing away from colonialism. And also, I think, our policy on education in which we stressed primary education at the expense of secondary and tertiary education was a great disadvantage.

When I arrived I realized that there would be a shortage of skilled and experienced people. I contrasted it with my experience with previous movements towards independence. I was in ? shortly before independence was granted there and at that time the whole provincial service had been localized and very extensive steps had been taken to prepare for independence. I also had the privilege of being the High Commissioner in the Federation of Malaya when Malaysia became independent in 1957. There, too, there had been a very great deal of preparation that included, in particular, what I think of as two critical issues: the administrative side and the question of law and order. But even though there had been these preparations, it was very interesting that at the time of independence, there was also a move to make sure that expatriates were encouraged to stay on for at least four to six years after independence. They got an increase in their superannuation of 10 per cent per year for the first four years. It is interesting that the expatriate head of the police force stayed on for about ten years. The Vice-Chancellor of the university, who was an American, stayed on for a similar period. Compare that with what happened in PNG where we had a new Commissioner of Police even before independence. And the university Vice-Chancellor left at the time of independence. It was very difficult with the limited number of trained and experienced Papua New Guineans to take over a situation like that. I share very much what Alkan Tololo has said. Although they were very good, there was only a handful of public servants compared with what was needed. It was quite obvious that there was going to have to be a core of expatriates to help plan the administration after independence, to provide the backing and the skills and the experience which was so badly needed.

As well, as the early stage at least, the environment was such that expatriates were not encouraged to stay on. In fact, if I remember correctly, if you did not end your service by 30 June 1975, or independence – whichever was earlier – you would possibly be at a disadvantage financially if you stayed on. So the whole situation was one in which there was a need to stop what was quite clear to me when I arrived: a major exodus of expatriates who had been such an important
part of the Administration. That was something that was shared by the PNG government of the time. They were as concerned as I was. My early dispatches looked particularly at the need to do something about the Administration, and about the police in particular. The police force was running down at a rate which was really hard to imagine. When I went to Papua New Guinea there were probably nearly 200 expatriates in the police force. Not all of them were extremely capable, but at least they had experience. At the time of independence half of them were gone, a year later only 44 of them were left. When I left, the number of expatriate police was 25, and many of those were not near the top. It was easy to say that there would be a law and order problem in the future.

John BALLARD

I arrived in April 1972 in Papua New Guinea to look at the process of de-colonisation over the next three years. In fact, I stayed for five. I had spent the 60s in both French and British former colonial areas in Africa. Arriving in PNG, I had a very distinct impression that this was really French Africa not British Africa. I was struck by the Australian tendency to assimilation – to treat PNG really as an extension of Australia. But the facts were that there were practically no Papua New Guineans driving cars at that stage; that the service people in almost all of the shops were Australian wives; that there were 3,000 plus Australians in the PNG Public Service. This was many more than the British who had served in India, many more than the British in any colonial service. There had been very little movement across to Papua New Guineans in the public service, with which I was particularly interested.

The ‘gearing up’ program was concerned with functions, but it left out altogether the fact that there had been no real gearing up on localization. Localisation policy was, I think, the one great failure and it dates back at least to 1963 when Hasluck lost a major stoush with the Public Service Association (a chapter which does not get into his memoirs). It meant that the public service, which was almost entirely Australian, was heavily entrenched and had no real plans or gearing up scheme in place for its replacement. That remained right up till 1972, although there was an Administrative College which had been giving training since the early 1960s. There was no serious localization plan, there were the beginnings with Sir Alkan and a few others, with the Public Service Board which was one of the first to begin to be localized. So in 1972 there was still a strong expectation on the part of Australians in PNG that they were there for much of their career.

A speech was given by Michael Somare in, I think, May 1972, strongly pushed by Paul Ryan, his chief of staff, in which he said, ‘We are not part of Australia, we do not have Westminster and Australian Public Service traditions. We do not expect to have 3,000 Australians in the Public Service in a couple of years.’ I tried to find some statistics to show that this speech had had an impact. White goods sales in Port Moresby disappeared over the next few months. It was fascinating: the expectations of Australians suddenly changed as to whether in fact they were staying on. So Somare’s speech, for me, was perhaps as decisive as any other turning point concerning the expectation of Papua New Guineans.

There was a Senior Executive program for about 50 of the senior (which meant really very young) Papua New Guineans which attempted to create an esprit de corps across the public service. But a lot of the departmentalism of Australian Public Service traditions remained intact, and it made it very difficult to appoint people across departments, and really to make the optimum use of the Papua New Guinean talents that were available.

Colin MacDONALD

I only want to make two points. First, do not forget that PNG was considered for a long time a territory of Australia, and they did not have a governor like the British or French or Americans had and everything just kept going as it was. Do not forget that it was administered similarly to the Northern Territory. I don’t know that many people thought it would ever become a separate state, but there was talk about it.

The second point is that Hasluck, in 1960, either during the visit to The Hague or soon afterwards, discussed West New Guinea. He said that PNG would not be independent for thirty years at least. And three months later, on 30 September, Menzies contradicted that. He said that he didn’t believe in setting times, but once tensions develop, we had better get out sooner rather than later. That was the pretty well embedded attitude in Canberra: once tensions develop, we had better get out sooner rather than later.

WOLFERS

It might be quite important in the current discussion to remember that the public service was not static. It was not the same thing at the beginning of this period as it was at the end. Once you start to think that through, you get rather a different picture.
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If I could return to one of the remarks that Mr Whitlam made … I became aware some time ago when I looked at the documents that, in fact, an internal working group for the Administration had been working on elections, an economic development plan and a university for several years before the Foote? mission and before the politicians in Australia had begun to do so. I think it is important to bear in mind that there were some good guys around who actually were thinking ahead as early as perhaps 60-61, certainly well ahead of all of that. I was not aware of this at the time. I would have been more derogatory a few years ago but I’ve grown older and met some of the documents.

I think one also needs to look at the state of the public service in 1972. I’ve assumed that this was one of Whitlam’s great insights into the colonial experience in Papua New Guinea: it was not good for Australia and Australians. That’s what he said and that’s what he did. Many of us accepted that. But I think we need to bear in mind the degree to which the government was losing control by 1972. It was not just the Gazelle, although that was pitiful; it was not just Bougainville; it was people in many other places refusing, for example, to pay local government council tax; and people defying the government in all sorts of ways. One of the reasons which, in retrospect, not one of the better reasons for turning the decentralized system of government into one that depends so heavily on grants was that not much money was being raised at the local level. Perhaps even more importantly, the social and political costs of it were becoming intolerable for any reasonable administration.

I think we need to look also at the different categories of people in the public service. There were certainly long-serving officers of no mean ability. There were also people who, from 1963 onwards, had no career prospects and behaved as if they did not, in many cases. In some cases, they saw great opportunity. I think some of the people around this table are an indication of that, for example, the young lawyers who came. They did very well, did great things and moved on to other things, because they had skills that were transferable. I’m not sure that’s true of many people in other occupations. The manner of the Australian government relates to the question of the administration. This was a colonial administration, not a government, and there were very few officers who had seriously taken part in policy making in their own areas who had the capacity or experience to do so. And some of the policy papers that we saw in 1972 could most generously be described as incompetent nonsense. There were certainly officers whose attitudes were antipathetic to any kind of reasonable government.

There was a lack of policy experience. There were people with not very helpful attitudes. There were new kinds of government emerging which simply created problems. The new structure of policing meant, for example, in some places the kiaps and the police were actually fighting over whose body it was. The new system was itself introducing specialized functions that could not properly start? at all levels. And I think you’ve got to look at the internal disintegration that was going on in the administration by 1972. I think it is a mythology about how good the administration was. One of my jobs with the CPC was to go around to various agencies to talk about the decentralization exercise. When I went to the DEA? they were unable to give me a staff posting list: it simply had not been kept up to date for quite some time. When I asked for a list of their powers and functions, they did not know what they were, and gave me two senior officers who worked for about six weeks and then came back with a list of powers and functions taken out of the Native Administration Act and the Criminal Code and so on. I think we need to be realistic about the state of government at that time because otherwise it allows us to develop this mythology about how it has all fallen apart since. My feeling in 1972 was that we were going to be very lucky to have a functioning system of administration after 1975.

We need to bear in mind that there were multiple factors in play: the attitudes of the people involved with the restructure as well as this lack of experience in policy making, the degree of Canberra control that had helped set that up, and the incapacitation that was occurring in the bureaucracy. To me, the remarkable thing that came out at the end of all that, was that a very small number of Papua New Guineans made a system in that state of disarray actually work at independence. The fear that many of us had at independence was not of a decline in standards, but rather more whether it would be possible to run a system of government, given the amount that was new and the amount that had actually fallen apart in the years before1972.

Patti WARN

I first met Sir Elia in 1964 when I went on a student delegation to Papua New Guinea. The first delegation from the NAUS was in 1963. It consisted of Peter Wilenski and Gordon Bilney who respectively went on to run Foreign Affairs and become a minister in Australia.

We traveled all around the country and visited many of the secondary institutions. One of the enduring memories I have is how lucky the then qualified secondary students in 1963-4 were in the teachers that they had at their various
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Institutions, who were in fact talking about self-government, political development and independence. The students themselves were forming their own associations. At the Holy Spirit in Madang Father Patrick Murphy who ran the seminary had a black American on faculty. Many of the students went on to become politicians, public servants, writers, teachers and agitators. I remember Father Murphy telling us that he accepted that probably most of the students would not go on to be priests. He believed, however, that he was educating leaders and thinkers which was what PNG was going to need more than anything else.

My point is that, without the political education that was so important in that generation of students that went on to form the Tertiary Students Federation, the Bully Beef Club and the Pangu Pati, an awful lot would not have happened, irrespective of what structures were in place.

Geoffrey DABB

David STONE

I want to take up a point that Ted Wolfers made, if I heard it correctly, about Papua New Guinea being only a colony of Australia, which was neither good for Australia nor Australians. Prior to going to PNG in April 1971, I spent the previous four years in Canberra. What I remember most particularly about the period about 1970 was the increasing coverage of PNG on national television, and at one stage, night after night, showing clashes on the Gazelle and on Bougainville, with police lined up against Papua New Guineans. It was pretty awful stuff, and I feel to this day that that had a traumatic effect. Of course, as we all know, the situation changed very quickly after that, with Prime Minister Gorton then Prime Minister Whitlam.

I mention this because no one else has so far. If we are talking about Australian perceptions, there is no doubt in my mind that there was a strong view that this was not Australia. Australia should not be in there in that sort of situation.

Sir David HAY

In hindsight, would I have done anything differently? I would like to say that there are one or two things that I would have done differently.

It seems to me, in listening to what has been said this morning, that there was a kind of explosion of movement towards self-government and independence. There were several strands in this. One, of course, was the change from a Legislative Council to the House of Assembly and its various select committees. I think they were influential. Another was the intervention of political leaders, starting with Hasluck who had the grace to admit, before he took office as Minister, that he did not know a thing about PNG, but he finished up by knowing a great deal, having visited it constantly over a period of twelve years. Another was Ced Barnes, too, in his way, with his emphasis on the need for economic development and his introduction of World Bank advice into the system. He should be given his credit for movement towards self-government.

Looking back on it myself, I feel that if it had not been for certain events in 1969, there might have been a smoother process – a longer process, but a smoother one – and it might have given time for some of the things that Alkan and others have been talking about to have taken place, which would have given a more satisfactory government infrastructure on which to build independence. I will mention two areas.

One is the situation in Rabaul and the decision to have a local government council election on the basis of what was called multi-racial councils, although it was not intended as a multi-racial council. The idea was to extend the area of local government authority gradually and to incorporate areas in the Rabaul situation which were owned by expatriates. I was a little worried when the time came for the election to be planned. We asked the then council what they thought of it and they were totally against it. They thought it would be much better to stick with what they had which was a small council but which was dominated by senior leaders. We referred it back to Canberra and they said that the government policy was multi-racial councils with the idea of the two races working together at the grass roots of building up a familiarity with democratic principles. So we went ahead. The voter turnout was tiny. We could have said that it had not been a satisfactory election and put in a commissioner, or whatever was done under the Act when a council broke down, and we could have started again. With hindsight, it is a pity we did not. I won’t go into it any more than that, except that it would have deprived the Prime Minister of the opportunity of being greeted by this enormous parliament in Rabaul, and having the satisfaction of feeling that he had moved things along very quickly.

The other one is the Bougainville situation where you had a situation which was quite tolerable in Australia where you could actually resume land for a public purpose. It is all very well to do that in Canberra or Melbourne, but not in
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Bougainville where people had their own particular associations with the land. Anyway, we decided and the government saw no alternative, that land had to be resumed in order to provide a port site for the CRA. We had previously resumed the land of an expatriate plantation owner – a very large area – and he had protested vigorously, and no doubt that gave impetus to the protests of the people of Guava. In the end, that situation was resolved by intervention of the Prime Minister, and Ceb Barnes who allowed the company to bargain, through the Administration, but outside the terms of the Act. As an Administration, we had thought that they should not offer more than was provided by the Act if you were buying land from landowners. Now that situation was resolved, but it took a long time, it took the intervention of the then Prime Minister and it left hard feelings, but not quite in the way that I would have expected. I had conversations with Paul Lapun several years afterwards, when he said that that was all we could have done. He said: why didn’t we leave it to the company? But the things that really bothered him were the enormity of the hole in the ground and the destruction of a lot of waterways that were vital to the livelihood of the villagers. I’m here to say that perhaps we could have done that differently.

WHITLAM

I was always depressed that it was taking us so long to do, in our own colony and trust territory, what was already being done in Africa or the Caribbean, by the British and the French. As I’ve mentioned, I said in my first speech on foreign affairs in 1954 that the British and French and Portuguese and Americans and we would have to get a move on in the territories which were not yet independent in the Pacific or Indian Oceans. I deal with some of these things in the passages I mention in *The Whitlam Government* which I did in 1985, but I will pick out a couple here.

In the Roy Milne lecture in September 1956 Paul Hasluck said ‘There is not, at present, and cannot be for many years to come, any possibility of a territory-wide franchise for the native people’. I remember asking questions at that time about which trust territories or colonies is it not possible for all the indigenous people to have a vote for their representative body. I think his answer was Fiji. He had been Minister for, I think, three years already. In 1951, six months after he had become Minister for Territories he said ‘It might be more than a century before a large majority of the native peoples could participate in management of the life, industry and politics of the country’. One cannot say that there was very great foresight in such a comment.

He speeded up a bit after he came back with Menzies from the Commonwealth Prime Ministers conference in London in 1960. When Menzies came back from the only visit he made to Moresby, he said that he had come to see that independence should come sooner rather later. But in October that year Hasluck declared that an expatriate public service would be needed for 20 to 30 years. He was moving ahead a bit. But we were terribly isolated here. I remember particularly that when Hasluck took over, he noticed – as Eddie Ward and Percy Spender had not noticed when they had responsibility – that at Government House in Port Moresby they flew the Union Jack. It was not until he became minister that Hasluck said ‘Let’s fly the Australian flag.’

Also, there was pressure on the government parties from 1949 onwards to have soldier settlement in PNG for returned soldiers, many of whom had fought there. That was particularly strong in Papua where people were Australian citizens. Although I discovered about six years later that the Papuans who were Australian citizens were not allowed to leave the airport until they had given a guarantee of one hundred pounds, that they would leave in a certain time. That is, our own citizens had to get permission to visit our country. These things had a bit of an impression on me.

After the 1963 federal elections, there was a new minister, a new departmental head, and a new Public Service commissioner. The previous administration arrangements, that is, the ones under Hasluck, had stood for a singularly long time. Hasluck became the first minister for the Department of Territories in 1951, Lambert the first secretary. But it was not until 1963 that Hasluck was made Minister for Defence and Ced Barnes was made Minister for Territories. Hasluck was sixth in the ministry, Barnes the 21st. At the beginning of 1964 Lambert retired and Gunther, a very great public servant of New Guinea and Australia whom Hasluck had promised to appoint as Lambert’s successor, was passed over in favour of George Warwick Smith. The Public Service Commissioner, whom Hasluck had recruited from the NSW Public Service seven years before, resigned and was replaced by an Army paymaster. So there was a big change; but for an extraordinarily long time – from 1951 to 1963 – there was the same Administration, ministerial and bureaucratic.

Then Barnes was brought in with a new hierarchy.

The other thing that impressed me about Hasluck when I became a member at the end of 1952 was that people in my local RSL Club – it used to be quite a respectable organization and I used to attend it. There were some young men
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there who wanted to go on the land in Papua. I went to see Hasluck who was very approachable in these things. He said ‘No, I see what has happened in Africa – Rhodesia and so on. I do not favour soldier settlement in our colony or our trust territory.’ He was quite unequivocal in those two things.

Now Ceb Barnes was a real gentleman, an honourable man. I pestered him with incessant questions later on, but he always answered them candidly. But the trouble was that the Country Party wanted the portfolio for Territories (covering at first the Northern Territory, and PNG) because it did not want those tropical areas to grow anything that was not already being grown in Australia. PNG could not only grow copra, cocoa, it could grow tea, coffee, sugar, pineapples; but the production of those things was discouraged, and Ced was a prisoner of that.

There is one other thing I want to mention in this context. There has been a recent biography of John Gorton which portrays him as setting out on the course of self-government for PNG. There is no doubt that Ced Barnes would do whatever a Prime Minister told him to do, but anybody who reads Hansard at the time would realize that Gorton was conducting what would now be done by every premier and prime minister: a law and order campaign based on the Mataungan thing. He said that there would be blood on his hands. This was after that great meeting of 11,000 people that we had there which commenced with the Catholic and Methodist church choirs. Now ‘having blood on their hands’ – well, we were in sacred company, that way!

The real change came when Billy McMahon was Prime Minister. I think it was in February 1972 that he appointed Andrew Peacock. Peacock’s people skills are very great. He is more than a show pony; he does have gifts in diplomacy, and of course he ingratiated himself with all the emerging people in PNG and he got on very well with them. The real change occurred when Peacock was appointed by McMahon as Minister for PNG. I used to quote them in the Estimates Departments, what was said each year in the Trusteeship Council in its resolutions; and also what was said, every three years, by our own submissions. They were always urging us to do more. In fact, the old Mandates Commission, between the two world wars, used to complain that we were not doing enough for education in New Guinea, that is, the mandate. There were these people, and the visiting missions were headed by distinguished people like Lord Caradon as he later became, and by French people and so on, people who did have experience in running dependent territories. They were all saying that we were moving too slowly. Hasluck realized that it was no longer sufficient, as other colonial powers had done, to leave clinics and schools to missionaries.

One of the terrible consequences of our administration of Papua and New Guinea is that there is no national language. All the colonies ruled in the Caribbean, or Africa, or South America by Portuguese, by Spain, French -- leave out the British – have the national language of the imperial power. We have this appalling position that there isn’t a national language in Vanuatu, or Solomons, or Papua New Guinea. PNG has been handicapped because there was no national language encouraged early by the British and the Australians.

We had a lot of way to make up and we were far too slow in doing these things. There are people like Gunther and Les Johnson to whom I give very great credit for picking up the opportunity to use the teachers training college to train the future governors, future leaders of PNG. And then at the universities. I tried to get the Hawke government to carry on national language, literacy for all, but they did not go ahead with it.

I don’t think we ought to forget the situation that between the two world wars we paid little heed to what the Mandates Commission was doing; and afterwards, even under Hasluck who was a meticulous and scrupulous administrator, we were saying ‘Wait till everybody’s literate before we give them any higher jobs, or train them.’

That’s the response that I make to Sir David. I hope you see what was behind what I say. A lot of people take the attitude that I would go ahead rather than have consultation, but at least I was one leader of my party who, if the party had a particular policy and I didn’t like it, I’d persuade them to get it changed. But if it was there, then I would take the first opportunity to carry it out. All of my visits to PNG were based on policies which had been publicly developed in the parliament, and that’s what I was about.

OLEWALE

When we were a colony of Australia, I wrote to you, Gough, some time ago when you were in parliament and I said, ‘Mr Whitlam, I’m addressing this letter to you. I want an answer from you: if any Papuan brings a petition to the Australian parliament, would that petition be admitted into the parliament of Australia. And your answer to me was yes. Papuans are Australians and anybody can bring a petition for consideration.’

Now, I am a Papuan, but I have had some very sad experiences as a Papuan coming to Australia. When I came to
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Australian in 1969, I was then a member of the House of Assembly. Sir Julius Chan and I were selected by our House to attend the Commonwealth Parliamentary Association meetings in Sydney and Canberra. Sir Julius was then an Australian citizen because Australia had granted citizenship to the Chinese. I was from Daru in Papua. When I came to Australia, I was given a small identity certificate. I was not given an Australian passport. I traveled with my wife and newly born son. We went to Melbourne to meet my friend Keith Mattingley and his wife where we stayed for a week.

When this question arose, I was looking through my old papers and saw this identity certificate. I said, ‘Well, I was in the parliament and I was born Papuan, but Australia never recognized me, or gave me an Australian passport.’

In 1958 when I was on school holidays from Sogeri, our people organized trade to Thursday Island in our long canoes. When we got to Thursday Island, we were told by Australian Customs that we could not come ashore and that we had to go back. We went back.

These things make me think. What were Australians really thinking about Papua? In the Australian Constitution I am sure Papua was Australia’s colony. But why weren’t Papuans treated as Australia treat other Australians?

Further to that, there were Samoans, Fijians and Tongans who came as missionaries. They had children in Papua and when they went home to Samoa or Fiji or Tonga, they were granted Australian passports. A Samoan missionary who lived in my village had two children born there. They went back to Samoa and later came to Australia with Australian passports, by virtue of the fact that they were born in Daru.

This kind of respect was never accorded to the native Papuan like me. Never. We were regarded as foreigners. (I will speak more about this tomorrow.)

Maybe not everyone knows some historical facts. If you look at the Australian flag, there are seven stars. I was told by Bill Gammage that one of those represented Papua. But we were never accorded the respect that we needed from Australia, for all our lives, under the Australian Administration.

I agree with you, Gough, that between the two world wars there should an education program in Papua and New Guinea. There was none. The real education program started after the second world war when retired Army officers started Sogeri secondary school.

I think you are going to laugh about this: when Sir Hubert Murray was governor in Papua, a French frigate called in to Port Moresby. Sir Hubert was looking for a man who would translate the French into English. They looked everywhere in Port Moresby then someone said there is a Papuan priest who can do that. It was Father Louis Vangeke, from Bereina. They called him and he was the first Papuan to go to Government House in Konedobu. He sat down with the Governor and the French admiral and interpreted for them.

This proves a point that Australia should have established schools and colleges long ago. But it did not.

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* Aid:

**Australian Aid to Papua New Guinea**

**Bill Morrison**

An Australian commitment to continue its aid to Papua New Guinea was crucial in overcoming fears that, with the coming of independence, Australia would withdraw its aid and leave PNG in the lurch.

I realised during my visit to Papua New Guinea with Gough Whitlam in 1971 and my early visits as Minister in 1973, when I spent lengthy periods in the Highlands, that the fear was not only widespread but actually promoted by groups opposed to independence.

There was a clear need to reassure the government and people that these fears had no foundation. In a series of statements by the Prime Minister and me, Australia's continuing commitment to assist Papua New Guinea after independence was clearly and unambiguously stated. The ALP Federal Platform of 1971 and 1973, in the drafting of which I was involved, endorsed these commitments.

I was aware that the PNG government, in order to strengthen its political position, was keen to have a forward commitment of specified funds. This presented a problem. The Australian Treasury's practice was to consider aid
proposals in the context of each annual budget. It did not favour forward commitments.

I wrote to the Prime Minister on 15 February 1974 seeking his agreement to assuring PNG of an indicative amount of aid over the three year period beginning with the 1974-75 financial year I suggested that a figure of $500 million for aid in one form or another, appeared reasonable. The Prime Minister accepted the recommendation and the Chief Minister was duly informed.

The hoped for impetus to the cause of independence did not eventuate. The PNG Government was facing a wide range of domestic political and economic problems which overshadowed the aid commitment. In addition, criticism emerged that the amount specified should not include the termination payment to former Australian employees on the PNG public sector. The opposition spokesman, Mr Peacock, claimed that he never intended that the termination payments should be included in the aid package. His claim was not borne out by the facts. In the one and only aid budget for which he was responsible - the 1972-73 budget - a sum of $2,815,000 was included as an item to cover the first lot of disbursements under the termination benefits scheme. The heading of the item was "termination and retirement benefits of overseas officers formerly employed by the PNG Government". In drafting the 1973-74 aid budget, I followed the example set by my predecessor. As disbursements under the scheme were well under way, the budget provided for $17,840,000.

In arriving at the indicative figure for "aid in one form or another" which I had recommended to the Prime Minister, I had taken into account the outstanding termination payments. The simple fact was that the termination payments were part of our obligations in our dealings with PNG. These outlays were incurred as a consequence of our previous aid to PNG in funding salaries and allowances to Australian personnel serving in the public sector in PNG.

Forms of Aid

In a speech on the Estimate of the Department of Foreign Affairs in 1970, while in opposition, I raised my misgivings about budget support as an appropriate form of aid to an independent Papua New Guinea. In a letter to the Prime Minister on 16 February 1970, I observed that the "danger I see in continuing with budget support is that we now have no say in either the level of expenditure or the collection of revenue. Nevertheless there will be an expectation that as before we will fund the shortfall. The PNG Government can indulge in all sorts of expenditures and if we fail to fill the gap, it will be Australia which is to blame".

Mr Somare had outlined an eight point development program. My approach was that an independent PNG should be responsible for the current account budget - meeting the normal operating costs of government with funds locally raised. Mr Somare's proposal could be translated into a development budget which would identify development programs and projects, the costs of which would be over and above normal operating costs. This budget would provide the basis for PNG seeking development assistance from donor countries and international financial institutions such as the UN Technical Assistance Agency, the Asia Development Board, the World Bank, etc.

While serving in the Australian High Commission in Malaysia, I had been impressed by the work of the Economic Planning Unit which formulated development projects and programs and invited donor countries to provide the required aid. In my view such a development budget was the appropriate focal point for Australian aid with details of the aid being worked out jointly by Australia and PNG. The Party Platform had recommended that Australian aid to PNG should be administered by a Joint Commission.

My approach was set out in a speech to the Waigani Seminar on 29 April 1973:-

Quite clearly for aid to be effective it must be related to the development goals set by the recipient government. I see our aid program for PNG developed in cooperation and consultation with your Government in furtherance of objectives thought out and defined by your leaders and enjoying the support of your House of Assembly and the people it represents. We have agreed that our aid will be worked out in the context of the Improvement Program.

As it turned out, the PNG authorities were reluctant to move away from the comfortable arrangements in which Australia automatically funded the budget deficit. They argued that the aid forms that I suggested were too inflexible and they wished to preserve their "right" to spend Australian aid in any way they saw fit.

My overall concern was that given the pressure exerted on and by elected representatives for quick fixes and electorally attractive expenditures, long term development programs in education, health, transport and rural development would suffer. Handing out bags of kina to elected representatives to distribute freely in their electorates does not seem to me
When the Department of External Territories was disbanded in December 1973, its aid function was transferred to the Department of Foreign Affairs.

Aid Administration

I had long standing reservations about the competence of the Aid Branch of the Department of Foreign Affairs. At overseas posts I had been involved in aid administration and my last assignment as a foreign service officer, pending my contesting the 1969 Federal Election, was to the Aid Branch. Neither the Department nor the Aid Branch had officers with experience of PNG. They were oblivious to the prospect that, following PNG self government and independence, Australian aid to PNG, which represented two-thirds of Australia's total aid, would become the Department's responsibility.

The ALP's Federal Party Platform Committee on Foreign Affairs and Defence, of which I was a member, included in the 1971 Platform a recommendation for the establishment of a mutual cooperation agency. In the 1973 Platform the recommendation was strengthened to read:

*The Labor Government will establish a statutory development assistance agency responsible to the Minister for Foreign Affairs responsible for projects, training and similar activities and relations with development institutions.*

On 8 March 1973 I wrote to the Prime Minister and, after referring to the Party Platform recommended that the Government proceed with the establishment of the aid agency. The Prime Minister set up a task force to consider the proposal. On 17 September 1973 the Cabinet submission recommending a statutory aid authority was approved. The decision noted (?) that "the agency will be established from 1 December 1973, the date proposed for the beginning of self government in Papua New Guinea".

I was then able to proceed with plans to transfer to the agency Department of External Territories personnel who had been engaged in Australian aid to PNG. My suggestion that Les Johnson, following his transition period from Administrator to High Commissioner, would be a suitable appointment as head of the new agency, was warmly supported by the Prime Minister. Johnson not only had hands-on experience with PNG affairs at all levels but his appointment would also be welcomed by the PNG Government in having a familiar face heading up an organization of direct importance to PNG. Johnson took up his appointment in April 1974.

In the lead up to the establishment of the agency and in its operational phase, bureaucratic power plays had been rife. An informative account of the rise and fall of the agency (by March 1976 it had been effectively abolished) is Nancy Viviani and Peter Wilenski, *The Australian Development Assistance Agency-A Post Mortem Report*, Royal Institute of Public Administration, 1978.

Ross GARNAUT

During this period I was working at the Centre for Financial and Economic Policy Division which was dealing with the Department of Finance which was really dealing with all those matters that the Papua New Guinea Administration had not had to deal with, before the de-colonisation process was well advanced. This was because financial and economic policy was not made in Port Moresby. I had a lot to do with Michael Somare and Julius Chan and especially Makere Morauta, the Secretary for Finance.

I would like to comment on Bill’s perspective on aid, and then say a bit about what happened the period of the Labor government. Bill has drawn attention to four things that needed a lot of change in the way Australian financial resources were delivered to PNG as a result of independence. I agree with him on two of those things and put a different view on a couple.

First, it did have to be a different sort of administrative mechanism at this end to deliver the large amount of aid that was going to be necessary for PNG. The aid function in Australia was transformed by PNG being an aid recipient rather than being effectively part of the Australian budget prior to self-government. The movement of personnel who had been associated with PNG for a long time into the aid function to lead it was very important. Johnson’s presence was very important.

Another very big change that had to be made – for the Treasury in those days – was moving to multi-year aid
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commitments. The PNG Budget had been settled as a bit of a by-product of the Australian Budget in the past. The Administration would learn about the amount of money to be transferred for the next year at about the same time as the Australian people: not much before Budget night. The Department of Treasury (there was no Department of Finance here in those days), through its control of the budget process, had the last say on that. They worked to annual budgets so the government’s introduction to a multi-year commitment was a big step in Australia, and an essential one in PNG.

At the time of independence more than half of the public expenditure in PNG was being financed by transfers from Australia, a lot of it through the Administration budget, but a lot was being spent directly by Australian government departments. The Defence budget did not go through the Administration’s budget, it was just the Australian military, through its defence estimates, deciding how much it would spend in PNG. The Australian Department of Civil Aviation maintained airports in PNG, and in the last year before Independence, as I recall, spent $A20 million on running and maintaining the airports. Quite a lot of the Public Works expenditure did not come through the Administration budget: it was just spent directly through the Commonwealth Department of Works which maintained an operation in PNG.

PNG was going to become responsible for all these things, in addition to the Bureau of Meteorology and quite a few others, in addition to funding the ongoing expenses of the Administration. So the things that had been funded by the Australian budget, either directly or indirectly, amounted to more than half of public expenditure in PNG. Therefore it really was not realistic to think of Independence with the government waiting until Australian Budget night to learn the basic shape for the year ahead.

I have a different view on the third and fourth matters raised by Bill: the amount and form of aid.

On the amount of aid, this was life or death for the new Administration in PNG. Bill says that he formed the view in 1974 that $500 million for aid appeared reasonable. Whether or not it was reasonable was going to determine whether the PNG state was viable; and the matter of termination benefits, while if you looked at the fine print of the Australian documents and things that have been said by the former Minister for External Territories, and the new minister for PNG, might have demonstrated that Australia understood very well that the $500 million included those termination payments. When a statement was made that $500 million was to be available over three years, it was not altogether clear, firstly, whether the ‘golden handshakes’ to Australian public servants was a component of that; and, secondly, this was a hugely important matter. Divide 500 by 3, you get about 173 a year. My recollection is that, in the year of Independence, something between $60 and $70 billion was spent on termination payments. That was a very large part of the three year commitment for that particular year. It was especially contentious because, as Tom Critchley mentioned this morning, there was not agreement in the PNG leadership that these termination payments were a good idea, anyway. They provided a huge incentive for everyone to leave at Independence and at the same time, unlike the British and French colonies, the independent government had no control over when people left. The amounts of money for individuals were very high, and many officers who would have been prepared to stay found that it was not in their financial interest to do so. When the PNG government heard that this was all to be taken out of their aid money, they were not happy about it. They thought it was completely counter-productive, and it obviously caused a lot of tension. One has to wonder such a counter-productive arrangement was negotiated, and that’s a matter of the politics of the Public Service Union’s relations with the Labor Party. It was very disruptive and very costly to administration in PNG.

On the form of aid, the PNG leadership perspective was that first, it was not realistic to move quickly – to have more than half of public expenditure effectively provided directly by Australia in the form of projects or programs. Secondly, if there was a major movement in that direction, it would weaken the processes of control and management of budget and public expenditure. It would effectively negate PNG leadership of the policy process, since aid was so important in the overall public sector. More important than that, it would weaken the role of the central agencies of the administration. Until recently, one might have argued with that, but over the past ten years we have seen project aid in practice – a form of what Bill was advocating in the early 70s has been used. The regional head of the World Bank, Klaus ?? gave a speech at Sydney University two weeks ago in which he attributed the very serious deterioration in the mechanisms for public expenditure control and management in the 1990s compared with what went before, substantially to the shift in Australian aid to project aid. He urged a movement back to mechanisms that would focus on the quality of the overall administrative effort, rather than just keeping Australian hands clean on bits and pieces; because in the end what mattered to development was the effectiveness of public administration in general, and not the effectiveness of particular bits and pieces.

It is a pity that Andrew Peacock is not here because I think that the government of Gough and Bill got the first couple of things right on aid: the personnel to administer it and the multi-year commitment. Malcolm Fraser and Andrew Peacock got the next bits right.
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There was a severe clash between PNG leaders and the leaders of Mr Whitlam’s government just before Independence, at the time of the Australian budget August 1975, over the composition of this $500 billion. The Prime Minister, the Minister for Finance, the Foreign Minister through Tom Critchley arranged to come down and see their counterparts at Kirribilli House. There was a long discussion through most of an afternoon. Don Willasee was there with Gough. Bill Hayden did not turn up but he sent Frank Stewart who was Assistant Treasurer. Bill later explained to me that if he had gone, he would probably have been persuaded, and he could not afford to move at all on that critical 1975 budget on which the Whitlam government was going to stand or fall. If he gave way to good arguments on PNG, then he would not be able to hold other ministers.

That was a bitterly disappointing meeting for the Papua New Guinea leaders. At the end of the meeting, Gough told Julius Chan, ‘You have argued very persuasively. PNG is very lucky to have a person like you as Minister for Finance. Unfortunately, your arguments have fallen on deaf ears.’ But the bitterness of those three ministers came out in public statements soon after. Michael Somare’s bitter comments were the whole front page of the Melbourne Weekly Times afternoon daily the next day. Andrew Peacock saw that, got in contact with Michael Somare, Albert Maori Kiki and Sir Julius Chan. In fact, he went on the same plane back to PNG. He began work – and got Malcolm Fraser’s support – that led to a different form of multi-year commitment very soon after the new government took place.

In getting that together, Peacock drew on the expertise of people here at the ANU led by Sir John Crawford. At the time I was in PNG on secondment from the ANU. Crawford developed the particular formula that underpinned the aid relationship for a considerable time. It was built around gradually reducing the real amount of aid by 3 per cent per annum; multi-year commitments with a review after every few years, with PNG agreeing, then regular reviews of performance including integrity of the processes. I think that arrangement was important background to the strength of PNG policy making and administrative control mechanisms for a decade and a half.

Looking back from 2002, the PNG story looks a sad story – possibly a tragic one. Looking back from 1988, it did not look like that. For the first decade and a half after Independence, PNG had shown great prudence in public expenditure. Even under the Fraser-Peacock formulae, there had to be a large reduction in public expenditure in the first independent budget. Real consumption expenditure in the first budget after Independence fell by 10 per cent. That is a bigger cut than any Australian government has ever introduced in a single year. It did that on the expanded amounts of aid under the Peacock formula.

There has never been, in any year since Independence, been an increase in real wages. The last increase was in 1974 and minimum wages were abolished in 1992.

So the real consumption and expenditure of the PNG government is today no higher than at Independence. Things did fall apart in later years. It is an interesting question as to why that is so. Klaus ?? of the World Bank said that the shift to project aid was an important part of the cause. I would rather see that as a sufficient rather than a necessary cause. There were plenty of causes in what was happening politically in PNG to cause a breakdown of the state with or without a change in the form of Australian aid. In any case, with Australian aid much smaller in the total by the 1990s, that was not going to be the critical factor that it would have been at Independence.

MORRISON

Could I just make one short point. The termination payments were not the result of Australian unionism. The termination payments were the result of Peacock asking for a report by a Mr Simpson who, like all private sector people, are far more generous when it comes to using government money than they are with their own money. The Simpson Report was approved by the Liberal Country Party, not by the Australian government of Gough Whitlam and myself.

Don MENTZ

I had not intended to say anything because there is a fair bit of bitterness in the whole story. But there are one or two things that might be useful for the record.

For those who are not aware, at Independence External Territories was abolished. ADAA was set up and its staffing was about 50/50 from the old Aid or Project Branch of Foreign Affairs and the rump of the old Department of External Territories, about 200-250 from each group. Les Johnson was the Director and his two off-siders were ??themselves?? from External Territories and Max Loveday from Foreign Affairs.

The bottom line is that the idealism that was behind the establishment of ADAA by the Whitlam government with its
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direct link to the minister rather than through Foreign Affairs, was dissipated quite a bit by both the way it was done and by the events as they unfolded.

Bringing the two rumps together was easy. People were not made redundant and there was no need to search for the best people. In the unfolding of events Les Johnson, who was very sympathetic to the idealism behind the move, had some difficulty controlling the people under him. There were major daily fights between the people from External Territories who were carrying that idealism and the people from the Department of Foreign Affairs who were carrying a good deal of conservative attitudes towards project aid and paying for which was their responsibilities from Foreign Affairs. I am sure that that reduced the effectiveness of the idealism and the actions that had been taken in forming ADAA a great deal. In the event, as soon as the direct link to the minister was cut, the Department of Foreign Affairs moved quickly to change the arrangements back to something similar to those that applied in the days of the Project Branch.

I will give you an example of how bitter it was. When we became part of the Department of Foreign Affairs again, I was the First Assistant Secretary of the Department of Foreign Affairs, I was never invited to the meetings of the senior officers known as the ‘prayer sessions’ once a week.

CRITCHLEY

(FIRST PART MISSING) … to meet capital needs of countries which need them, financial needs, and the other one is to provide skills and training to people. In PNG’s case, I suppose in the long run, it will have the resources so it will not need capital help, but quite obviously that is going to be a long way off, and there is going to be a need of capital there. As Ross Garnaut has indicated, there is a budgetary need which – it is not worth arguing about – it was there, and we would have to meet it. We were not talking about recipients and countries paying for aid, we were talking about co-operation. Surely in this case it should have been possible to have had a co-operation between the people who were dealing with this on the ground who could look at things and decide what aid was necessary in PNG in order to meet its budgetary requirements. I would have thought that Ross Garnaut, for example, who was on hand with his staff at the time would have been able to work out and give arguments that Australia could accept.

Then there is the question of skilled people. There is no doubt whatever that this was a basic requirement of PNG. It is also quite clear that there were two ways in which this could be met. One is by education, and education has not formed a very important part of that. I always thought of aid programs.

The other one, in my experience, which is important is training people on the job. People can learn things much more quickly doing it with skilled people who know how than they can by more indirect methods. So while I can understand exactly the arguments of Ross Garnaut about project aid, I still think there are projects which are very important in being able to give on the job training.

I would like to give an illustration of this. At Independence, I thought that our Independence gift should have been to connect the highway between Port Moresby and Lae. It was more expensive than the Australians had wanted at that time, but it would have had great advantage. We could have used it to make sure that PNG had a public works program that could operate. A major project would be the training and establishment of an efficient public works program. I say this because when I was in Thailand, we were able, through our aid to the Highways Department, to create an official Highways Department which rescued Bangkok from being an isolated capital in the long run. There have been later roads throughout the country. In PNG it has always been one of the very real needs: communication by road. I think it is one which could have a great effect on the economy here. Instead of that, we gave a library. This was a good idea, but it was not the need that PNG had at that time and I think it has fallen into disuse. I can understand why Australia did not want to accept my idea – we could have called it Independence Highway or National Highway – but it would have had an effect on PNG’s capacity to carry on in public works which none of our other aid has done.

DABB

There is a dingo fence between Queensland and NSW. Queensland built it and NSW maintains it. In Papua New Guinea, PNG would have to build the highway and Australia maintain it.

OLEWALE

I would like to comment on what Tom said about the highway. I think that his idea was a very good one because we have been talking about that highway. To really bring unity to PNG and to call it a real nation, we have to have a trans-island road from Lae to Port Moresby.
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Before I came down on Friday, in Port Moresby there was an Institute of National Affairs seminar sponsored by the World Bank. When they compared PNG, they said PNG has a lot of resources, but very poor management. Also, infrastructure has really deteriorated. The roads and bridges, hospital buildings, school buildings have all gone down.

I would like to support what Geoffrey Dabb said: PNG building and Australia maintaining. (Laughter)

Regarding the library. I was there when Gough came up to open the National Library that the Australian Government had given us. Today, Gough, that building is a sad story. It has not been maintained and no one can use the part where all the things are kept because something has happened with the weather because there is no air conditioning and acids are coming up?. My niece works in that library. The people who work there are very frightened to go and use the library. It is very sad. Gough, you gave us that library but it has not been maintained. It is deteriorating every year.

TOLOLO
I’d like to comment on the National Library too, because I happen to be the chairman of the Library board now. That is a problem we face. But I look at it differently. The country has a responsibility to maintain that library. It was a good gift and it has provided a service to the country as a whole, addressing the different programs we have and so helping the provincial governments to re-open the 19 public libraries. All of them except six are closed. A library is a good institution for development among our people, especially the younger generation.

There is an interesting problem happening now. Those who have been to school are becoming illiterate. We do not have sufficient material to help those people maintain their reading skills and ability to understand some of the issues.

But back to the National Library, it is a good institution, not only the National Library but the Archives as well. Those are the two institutions I look after right now. The Archives has got very good facilities – that was also part of the gift – and it is enabling us to keep some of the records of history, some of the things we are collecting back from Canberra are there so that people are aware of part of the history of the nation. We want to maintain that faith with Australia and other institutions here.

I’d also like to comment on the aid. A lot of people have spoken about it but I find that when we were given the assistance, there were no controls or guidelines. When our people got it, they spent it where they wanted to spend it. The idea of giving us a percentage of untied aid was very good. I happened to be in Canberra? the issue was discussed. One of my tasks was to suggest to the Australian government to reduce the untied aid and increase the tied aid component because the benefit of the project that was carried out with that assistance would be seen. It has also enabled us to plan our activities within the country. I think tied aid is important because you begin to be accountable to your taxpayers. You can tell them that this is where your money went.

On the question of roads I think probably we could have done better. Now Air Niugini has become very expensive and if there was a highway between Lae and Port Moresby, that problem would have been eased. There are problems with roads everywhere in the country. Maybe there might be the possibility of another project on that road. Communication is so important, especially for unity in the country.

MacDONALD
I have not been very happy over some of the comments made in the last few moments. I was in the PNG/Pacific Branch for quite a while from 1979 to 1982. But even before, when I was in PNG, we discussed quite a lot with the PNG government about how they wanted aid in the future. Ross Garnaut went with Bill Morrison when those aid negotiations were taking place. I never went inside Kirribilli House. I have read the record since.

Basically, the PNG side said, ‘We want the money. We don’t want you interfering. Give us the capital.’ The money for the expatriate termination payments was added in to give them a bigger base. We knew it would be a one off, one or two years, and then it gave them a bigger base. But they still said that they wanted the capital. We continued to pay the expatriates, we continued to pay for their Sydney procurement office, and they always wanted the money. As Sir Alkan said, they spent the money the way they wanted to.

When, in about 1979, we made some suggestions that things were not going too well and that we might switch to project aid, they screamed and yelled. I got abusive letters from PNG, despite the fact that I had to hold the line against Treasury and others here to keep the quarterly? formula? going. But we had made a commitment; we had to honour it, I said. But any suggestion of deviation from us telling PNG how to do anything was objected to.
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As for the ADAA thing, I think Don is pretty right, in some senses, I think there was a scurrilous person or two in the Foreign Affairs side. But the Foreign Affairs approach to aid was laid down in the 1950s. If a country came to us and said we would like you to do something – provide experts or fund something – then we would do it. But the rule was that we did not initiate it. We did not tell India or Burma or Indonesia what was good for them. That’s changed a bit, in recent times, particularly in the Pacific islands. But the philosophy then was that we provided some monetary, some supervision, but basically we just provided the service without choosing what was best.

I think the Territory people came with a different approach, and that took them a while to adjust to. I think Les Johnson probably did a good job but I do not think it was all one way.

DENNOON

May I just ask – you may not be the person to ask – but it does seem to me that the payment to PNG from 1950 onwards ran in parallel with payments to the states –

MACDONALD

PNG found out what their allocation was the same way as the states did: they read it in the paper, usually after they had announced the budget –

DENNOON

but equally, like state premiers, nobody likes to be told what to do with the money. In many ways PNG was a non-self-governing state.

MACDONALD

Previously, Territories had run everything pretty tightly from Canberra, as they did with the Northern Territory, and there was a different philosophy which I think we paid for badly in the transition. But they said they wanted the money.

WOLFERS

I think there is a bit of confusion in not looking at the sequence, a bit of re-writing of history going on. The first thing is that I think the change from the grant aid program and project aid is vastly less significant that we are being told around this table. The reality, in the last few years in particular, has been that a lot of the programs in project aid has been spent as if it were untied budgetary aid. Very simply, in the work that I am involved in at the moment, AUSAID quite sensibly looked at doing things like paying airline tickets for PNG public servants to do their jobs on the other side of the country. Why? You want them to think that that was some kind of big change in the aid relationship, I am not sure. There is a flexibility which is clearly discounted, but there is also some new rigidity.

It is also important to bear in mind that it is just not true that things started to fall apart after Independence in the aid field. Anyone who remembers the extraordinary disciplines of the NPEP would have to say that during the period through to at least to the late 1980s, there was a disciplined public expenditure which probably did not exist even before Independence. I’m sure the process by which people had to apply for the money, the way in which the development component of the budget grew – Ross knows more about this than I do – it is just not true to contribute current problems to that period.

I would go a step further and say that the problems with the slush funds were about 20 years later. It is important to bear that in mind that the causes of many of these things and the way they came through differ.

It is also important to bear in mind that the difficulties and disagreements that arose in 1975 over the aid were repeated on at least two subsequent occasions where Australian governments failed to make clear that the generous offers they were making to PNG included the component in which they were essentially hacking at what the Papua New Guineans agreed, whether they agreed or not. The most recent was over the money the Australian government, the SA100 million announced by the Australian government a few years ago for Bougainville. I remember very clearly the Papua New Guinean officials getting off the plane, and I said to them are you sure that this is extra, this is over the aid? They answered yes, and of course it was not. And it never has been. That is the third time that has happened, that I can remember.

So it is important to bear in mind domestic Australian politics, the playing off between government departments. PNG also becomes a victim of what is going on.
Finally, on a slightly sour note on another question. The trans-island highway sounds like an undiluted good, from certain perspectives. From others it is not. It has always been politically very contentious. An hour before I got on the plane on Thursday I had a Papua New Guinean say to me, very firmly, that that was exactly the sort of thing we do not want; for exactly the reason that Mr Whitlam was talking about earlier which is the problem of managing inter-group tensions in PNG.

I think we need to be very careful about the assumptions on which we are operating and also about sequence and accuracy. The thing has actually changed quite considerably over the 25 year period.

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WARN

My question is partly motivated by what Tom Critchley was saying about the Colombo Plan and helpfulness and co-operation. I wondered in passing if anyone has any notion of how many reasonably well qualified volunteers in all sorts of areas might be working in PNG at the moment, compared with around the time of Self-government and Independence. Going back to my time with student organizations, we had a fairly amateurish but well meaning work camp program in the 1960s which involved Australian students working on very basic amateur infrastructure projects like helping schools or repair hospitals and things like that. I suspect that nothing very much like that is happening any more although there are individual school-twinning relationships. I think the university connections have probably broken down in the last 20 years, and I think that is a pity.

The other thing in relation to the aid discussion, is that it seems to me that there can be no realistic discussion about aid issues today for PNG without factoring in the unquantifiable devastation and expense that HIV-AIDS is going to cause in that country, because it already is causing it. Also, post September 11 and post Bali, what the concerns are that may feed into the aid budget as well as into defence and intelligence concerns about people movement and the like.

I think that there is a lot of capacity with PNG’s encouragement, if it were to be that way, for more Australians to get re-involved in a voluntary capacity which would not require huge termination payments because it would not require huge salary payments in the first place.

TOLOLO

That’s a very valid point to raise at this gathering. Regarding the number of volunteer organizations already in PNG, some of them are Australian based, British based and there are voluntary organizations also developed within PNG to take up this role. They are doing a lot of work for the country as a whole. We also have the Aesop Organisation in a big way. I have been involved with them and encouraging them to come. There are a lot of things that they can pick up and help the provinces and the country as a whole.

On the question of AIDS, the PNG government is tackling that issue very seriously. They have a council on AIDS and they have decentralized that so that each province is examining the whole question. The program has been developed by the national government and they have regular publicity to try to inform the public about the effects of AIDS on the whole population.

Rotary also has been developed in most parts of the country now, in the main towns. Australians participate in that. The YWCA, YMCA are also helping us, and Australians are encouraged to participate in those organizations.

There are also Friends of the Library in PNG. They are helping us to help the provincial libraries. There are groups, mainly Australians as well as Papua New Guineans helping us.

So the voluntary service is coming in a big way and making a real contribution to our development.

DABB

(I could hear isolated phrases but couldn’t string this together.)

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* The Economic Development Program: its priority over constitutional change; efforts to improve rural production; implications of economic development, especially in towns.
It is salutary to recall what the PNG economy was in the years leading up to Independence. It was a tiny economy. It was really a big lump of Australian public expenditure transferred up to PNG. There was one of the world’s great mines, a little bit of cash cropping activity and a lot of services activity supplying mostly the public sector and the mine. The tax base was, most importantly, people in the public sector, the mine and people in the service industries supplying those.

The mine was new: it came into operation in 1972. In all of the Australian government thinking in the years leading up to that it was an important part of the financial independence story, not only for what it bring itself, but for the model it would provide for other major resource projects. In the full year of operations the profit were $A158 million at a time when the Australian dollar was worth a third more than the US dollar. Under the agreement between the Administration and CRA there was to be no tax on income for three years and there were going to be another six or seven years when no income was actually paid, because the whole of capital expenditure was then to be written off before taxation actually became payable. Talking to Administration officials and External Territories officials about the background to that, the thinking was very much that it would start paying tax about the time the country reached Independence. The Agreement was entered into in 1967. In giving away a lot of revenue in the early years of operation of the mine, the Australian officials thought they were giving away Australian money, but the acceleration of the timetable meant that they were not.

The scale of monetary activity had increased enormously after 1964. There was a big change of gear, as I discussed in *It’s Time for Building*. It was to do with the Australian government recognizing that, although Independence might still be a long way away, at least you had to start thinking about building a stronger economic base for it. They had to, to pay for the national telecommunications system which had not existed previously; to build some very basic infrastructure such as ports and roads, which did not exist; to build a system of secondary schools which hardly existed in the early 1960s, and the universities; not to mention the whole paraphernalia of governance in a modern state. These expenditures were necessary if you were to think of there being anything like a democratic in PNG.

The Australian government’s embarkation on this build up of expenditure was not uncontroversial. In the last session I remarked upon some of the exchanges about levels of aid at the time of Independence. At that time, the PNG government was putting the perspective that was later reflected in the Peacock aid agreement: a gradual reduction of aid, in real terms, over a long period of time. I remember discussing that perspective with senior officers of the Australian Treasury. At that stage John Stone the Deputy Secretary was the dominant personality of the Treasury. John had been head of the aid branch of Treasury at the time of the World Bank mission. He was putting forward perspectives on the level of aid which were very influential through the mechanisms I mentioned before, at the time of Independence, very influential on the Australian government thinking. When I would say to John Stone that implementation, of the sort of perspective he had would mean the collapse of everything that has been built in PNG. His opinion was that everything since 1964 was a terrible mistake and the sooner that PNG faced reality and achieved a realistic level of expenditure, the better. Now was the chance, he thought.

That was not a perspective that the PNG government shared. The PNG government thought that a radical reduction in what the public sector did in PNG at the time immediately after Independence, would have been inconsistent with maintaining democratic institutions. The leaders of PNG were probably right. The choice was in continuing levels of expenditure something like those that had been built up after 1964 or doing something quite radical that democratic leaders of PNG judged to be inconsistent with continuation of democracy. I think that is a very important perspective to have on events at that time and subsequent events.

The perspective on the long term level of aid that PNG put to Australia was actually a rather stringent perspective. Reduction of real level of aid by 2 or 3 per cent per annum at a time when population was growing by 3 per cent and when aid represented more than half of the budget and was a very large part of the economy. It was actually a very tough thing to implement. It would mean, on reasonable expectations about private sector growth, very little new public sector activity for as far into the future as you could see. But that was understood and accepted. As I mentioned before, the first budget after Independence cut real consumption expenditure of government by 10 per cent.

Of all of those other expenditures leading up to Independence, a lot of them, in retrospect as much as at the time, seemed to be inevitable accompaniments of preparation for Independence. They were all too late, as Gough said, but too late or not, not to have had those early products from the UPNG at the age of 27 and 28 filling the secretaries’ positions in all the major departments, would have left the country very much weaker. A couple of years earlier, there would have
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been no graduates to fill those positions. Morauta was Secretary for Finance three years after graduating, one year after entering the Treasury at the age of 27. Siaguru, Foreign Affairs and Trade, the same; Namaliu, principal private secretary to the Prime Minister then Chairman of the Public Service Commission, all very much the same. They were products of the very first year of university. There had not been time for those who had been in the second year to come through. Similarly the communications systems, the very rudimentary elementary infrastructure.

Some of the post 1964 expenditures were directed at increasing the size of the private economy. Some things worked and some did not. The expenditure on roads, the Highlands Highway, was effective in expanding the coffee industry. The investment in that World Bank period in getting the palm oil industry going was brilliantly successful. The parts of PNG that work for rural development today are the provinces, apart from East New Britain, are all the palm oil provinces. That is a product of that World Bank push in the late 1960s.

The mine was a success for a while and then the center of the tragedy that brought everything undone. The civil war in Bougainville after 1989 was, in my view, the most important determination of the general deterioration of governance.

Other developments in the private sector were mostly service developments, supplying the other activities. They did not have a lot of momentum in themselves. It has been pointed out this morning by Ted that at the time of Independence an amazing array of occupations was still undertaken by expatriates. Certainly the faces of bank tellers and in the supermarkets were white; even some of the people on the building sites. Drivers were mostly white. The economy was run on expatriate skills and even basic labour to a considerable degree.

The acceleration in education and public expenditure, the attempts at development from 1964 had not made much mark by 1972-75. The one big mark was Bougainville.

On policy making structures, the Administration had very little capacity for implementing financial and economic policy in the national government. The budget parameters were basically established in Australia. There was an Australian currency so there was no need for monetary policy. All the Australian statutory authorities operated in PNG as part of their own operations: TAA, the Commonwealth Bank and so on.

The remarkable thing about the period from the last quarter of 1974 through to the end of 1975 is that all of that changed so quickly and the pace of change in the economic area was phenomenal, as it was in so many other areas. Not only did there have to be a transfer of ownership and responsibility for many functions, but for the first time in PNG there had to be development of capacities for policy, the monetary policy.

New currency had to be introduced. For example, the kind note was introduced on April Fools Day 1975 and the Australian currency was to be completely eliminated by 1 January 1976. There was a bit of debate about the form of the new monetary system but the pace of change meant that basically what was implemented in PNG under mostly sound advice from the Reserve Bank of Australia was a simple institutional copy of the Australian monetary system. At the time I advised against the introduction of the Australian exchange controls – the Reserve bank people argued against that if Australia needed them, why did not PNG need them? Eight years later in the Prime Minister’s Office I was able to play a role in getting rid of the Australian exchange control in Australia, but they are still there in the 1975 form in PNG and doing a lot of damage. A new monetary system meant a new monetary policy, and there had been no thinking about these things in the years leading up to Independence. Julius Chan, with consistent support from Somare, led a process of inculcating a sense of pride in fiscal and monetary discipline. The hard currency policy based on commitment to fiscal discipline, not running substantial budget deficits, not running into unmanageable debt problems. That was very much a political process, with the leaders at that time taking pride in building up new mechanisms that could work.

In summary, I have underlined the huge amount of action that was necessary in a very short period of time: a budget policy mechanism for the first time; monetary policy for the first time; new currency; borrowing without an Australian government guarantee for the first time; renegotiation of the Bougainville copper agreement necessitated by the things that I’ve just mentioned in a way that was consistent with introducing mining tax laws that would allow other mines to get going; taking over ownership of a national airline, bank and other institutions that were successors to what Australians were doing directly at the time of self-government or shortly before.

The remarkable thing is that a small group of Papua New Guineans kept up with the pace and held things together pretty well for quite a while after Independence. The really challenging question is: why, after almost a decade and a half, of economic stability, moderate but nevertheless significant economic growth, things fell apart so badly in the 1990s. I do not think the issues of the time that we have been discussing are the full explanations for the 1990s.
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One other thing is the story of corruption. Looking back, now when we can see corruption so damaging in PNG, the treatment of this issue by the outgoing Administration, the new Administration in the early days appears naïve. It was not much on anyone’s agenda. It was on the agenda of the Constitutional Planning Committee, with the Leadership Code. That has continued to play some positive function up until now – the Office of the Ombudsman. But generally it was thought that putting the sorts of controls of an accounts committee and auditor general that are used in Australia would do the job. The CPC’s leadership role was welcomed by the Finance Department as an extra string in that bow.

Within a couple of years after Independence, it became clear that those mechanisms might not be strong enough. That is when the leading public servants – Morauta, Namaliu, Siaguru and Lepani persuaded Somare to introduce a toughened up leadership code which was to go into the Constitution that would cut out a lot of the activities that now can be seen as being the main avenues for corruption. That was unsuccessful. There was very little international community support for that. In fact, there was some active opposition to it because it seemed to threaten stability. But, looking back, those young leaders not being able to go further than they were allowed to go at that time, seems to have been historically important.

MATTINGLEY

I would like to ask Ross about cash cropping which, I remember, was very important. It was based on the expatriates to a level of about 90 per cent, I think. It was a source of considerable revenue for the government of PNG. There was even a suggestion by the UN Trusteeship Council that there should be some kind of a levy on planters to make a contribution to local government councils, but that never got anywhere.

My question is the role of cash cropping, the significance of it these days. I am also wondering about whether there is any interest and possibility of natural gas offshore being developed. It was talked about in the 1960s and perhaps you could comment on the significance of the Ok Tedi mine. Sir Ebia Olewale, who is a consultant to the company, might care to fill in.

LEAHY

I would like to speak on rural economic development and other matters relevant to it. There is no doubt that PNG has the potential to be one of the richest countries in the world, certainly the richest black country. The gods have given them extraordinary amounts of minerals, magnificent waters for hydro, gases in abundance and the most magnificent soil that you could ever wish for. These are tremendous assets, if handled correctly.

The whole country, as we developed towards Independence after the War, and certainly before the war – but it really gained momentum after the war – after cargo cult, because the people really could not see where this great wealth of ours was coming from. I can remember quite well the story of an aeroplane landing, people rushing out to see what gender it was, looking underneath it, and taking food to it. From that sort of humble beginning of the cargo cult, we then began to develop cash cropping, particularly in the areas of coffee and cocoa, coconuts which were already well established in the islands, but we had a complete lack of private enterprise.

The Australian government, in its wisdom, which I think worked extremely well, selected certain Europeans with farming backgrounds to go out and live with these people and to develop various cash crops – rice, peanuts, coffee, cattle. We relied so much on the local people for work and for other things. We were also very much aware that, unless they grew economically with us, we could not hope to be there after Independence. We did hope that, if we were a partnership with them, there would be no economic jealousies between us. This worked extraordinarily well, particularly in the highlands, with the coffee distribution by the planters. It worked extremely effectively in my own area with the rice and cattle and particularly peanuts where a million dollar industry was developed. There were many hundreds of cattle distributed into the areas. We had a Cattlemen’s Association meeting. I sent out letters to everyone in the industry (in pidgin) and everyone knew what was going on. The government was behind us. There was a great lift in the cash economy. ETA Peanuts took everything we could grow. We formed insurance companies with the local people. My younger brother went into partnership with a native and they both became millionaires.

When the Highlands Highway opened up, this gave a tremendous impetus to the highlands people for further development and wealth. There were huge areas of coffee planted by them until they overtook the European planting. At the particular period the price of coffee was very high. They were actually hiring lakatoi to go out to Japanese boats and picking out a vehicle on the boat and sitting in it and claiming it, then being lifted out on to the wharf. Such was the dynamic growth of wealth with the people. They called themselves businessmen and this was a big theme. The education program was going on and land development, and these cash crops were coming more and more on stream.
Vegetables and kaukau were being taken over to Moresby from Lae, the bulk of which were being grown by local entrepreneurs. This was a period of great friendship and partnership between us all. I felt elated to be part of it.

Then the government gave taxation relief to any company that wanted to start up. This developed tremendously. The only snag that I could see was with Bougainville: those people who lived where the actual mine was. I was of the opinion that we should have made millionaires out of all of those people because then they could see that the gods were generous enough to give them this huge amount of wealth under the ground and that they were all millionaires. But, of course, under Australian law, everything belongs to the state. I do believe that this created great problems.

When I took up land in the Markham Valley, the Chivasing said we could take all the kunai country as it was wasteland. They had about a million and a half acres. We only needed the certain rights for the kunai and the gardens along the creek. When they saw my first crop of rice growing, they said, ‘This land is marvelous.’ The government was buying land adjacent to me. A young patrol officer came out to buy it. The Chivasing people said to me that they thought that land was worth a lot of money, but the government bought it from them for a pittance. I begged the government to do otherwise, to make the Chivasing feel part of it, as we would. We would not sell off our land. Let’s introduce a system of buying land and we may not have problems further down the path. Speaking of economic development, this basically was very much part of this partnership, that we are all together. In Bougainville, I think the land was a massive problem and I do not we could have fixed it, and I don’t think anybody is going to fix it.

In the towns there was a great deal of development with the factories being built, with young mechanics, young carpenters. The offshore people were beginning to come in and put up factories and creating employment. This developed into a tremendous migration from the people living in the villages into the towns. And as we have seen, it has its terrible problems.

There was agricultural and industrial growth, with the advent of Bougainville and other mines, huge quantities of gases, so that economically there was a tremendous potential, and it was moving. I thought it was absolutely magic. I also thought it was a great thing when a Papua New Guinean started his own business – and quite a few did when the Highlands Highway opened up – they represented quite a large chunk of the transport businesses. I was very proud to be part of it.

One thing that is worth saying is that there is some danger of history under-recognising the importance of corruption in the post Independence economic development of PNG. The potential for it was there, pre Independence, and a little bit was occurring now and then, in terms of the resource development negotiations with particular country interests. I do not have hard evidence but I believe that after Independence the commercial sector of one or two countries in particular – not Australia – systematically corrupted the political, public service and ownership areas in PNG. I think it has been of tremendous importance. It is easy to underestimate it because the hard evidence is not there, but I do not think you need to be too brilliant to know what an impact it has had. I am talking about the forests, fisheries and minerals. There was quite a lot of negotiations with people from two particular countries before Independence. The potential was always in the background and I think it was systematically pursued after Independence.

**Approach to Foreign Investment**

**Thomas W. Allen (prepared paper)**

My first visit was in 1974 to help sketch approaches to the promotion and regulation of foreign investment and the role of the proposed National Investment and Development Authority (NIDA). The work was orchestrated by Julius Chan (leader of the Peoples Progress Party and Minister for Finance), who saw important roles for foreign investment and the private sector, but was conscious of the need to ensure that PNG received fair value for its resources B particularly minerals, timber and marine B and that Papua New Guineans were not sidelined in business activities such as wholesaling, retailing and construction. I worked with a team composed principally of Finance department officials, led by an expatriate Assistant Secretary. Chan kept a close tab on the work of the team, and it was clear that he wanted to maintain political oversight for foreign investment policy and NIDA.

When I was invited back in late 1974 as interim Director for NIDA, the real work started. And the scenario was very different. Responsibility for work on foreign investment legislation and NIDA was shifted from Chan to Gavera Rea, a stalwart of Pangu, whose portfolio included industry and commerce. The team I worked with comprised principally high-level PNG government officials representing various ministries, headed by the Secretary for Industry and
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Commerce, Kipling Uiari. There were many more players and stronger political interest. And a lot of outside pressures, local and expatriate.

Building a consensus on the draft legislation - which covered the framework for foreign investment and technology promotion and regulation, the monitoring of government corporations and the structure and functions of NIDA B did not come easily. As could be expected, there were different, and in many cases, strongly held views.

First, there were nationalists who believed foreign investors to be exploitative, whose only interest was to rape the natural resources of the country and in the process destroy the environment and culture. They believed that without firm Government action, foreigners would continue to dominate trading and all other businesses, squeezing out Papua New Guineans. Some argued for a government takeover of foreign businesses, while others argued for firm government action to limit the activities in which foreigners could be involved, and where they were allowed, for strict controls on how they go about their business. Emergent village development groups, such as Kabisawali, were offering an alternative form of development, which they believed to be more appropriate than the traditional western model.

Second were those, principally expatriate, who believed in a continuation of the status quo, arguing for limited constraints on foreign investment except perhaps in major resource projects. They believed that Papua New Guineans did not have the skills or capital to run businesses, and that it would be a long time before they could. Some, of course, simply believed that foreign investment in itself was good, and limiting it would constrain growth.

Third were those who recognized that foreign investment would have a major role in Papua New Guinea’s development, and thus should be encouraged, although not to the degree that it is exploitative of resource and/or hinders the development of PNG enterprises. This group dominated, although their views covered the full range of the promotion/control spectrum. It boiled down to where along the spectrum general consensus would be reached.

The outcome was affected by three external influences.

First, other newly emergent and developing countries had recently grappled with the role of foreign investment, facing the same concerns. The ‘wisdom of the times’ involved legislation which provided incentives to foreign investment in priority areas, coupled with conditions for approval which served to maximize contributions to the country through such requirements as local participation, training, further processing, and environmental constraints. Technology arrangements were also scrutinized to ensure they were in the national interest. Investment boards were set up to implement the regulations. Examples were the Board of investments in Thailand and the Philippines, BKPM in Indonesia and FIDA in Malaysia, and similar bodies throughout Latin America. These became ‘models’ for PNG to draw on.

Second, a wealth of international experience became available on large-scale natural resource negotiations, particularly in mining. These also provided ‘models’ for PNG.

Third, the Tanzanian experience under Nyerere was looked on excitedly by many developing countries. Newly emergent countries, particularly in Africa, were looking for alternative modes of development which were more akin to their village orientation, and which moved them away from the cloak of colonialism and foreign domination. This was an attractive ‘model’ to many Papua New Guineans.

Many advisors, including myself as part of the first category, were there because of their experience in one of these fields. A consensus emerged which recognized the critical role of the private sector and the importance of foreign investment, but stressed the need to channel foreign investment into areas and on terms where it could make the greatest contribution to development, reserving other areas for Papua New Guineans. However, as work progressed and the views of the team firmed up, interest groups applied pressure directly and through the political machinery. As could be expected, existing commercial interests were the most concerned, particularly because of the provisions in the proposed legislation relating to reserving certain areas for Papua New Guineans and the registration of existing foreign enterprises. Also, political interest grew, with ministerial advisors and parliamentarians wanting a more direct say on the content of the legislation before it reached cabinet and the floor of parliament. Interestingly, there was no apparent direct pressure from the Australian government on the content of the legislation even though Australian business interests could be affected, although there were strong views expressed by some Australian officials wanting a more liberal approach (and such views could have been channeled through members of the team working on the legislation).

The outcome was fairly flexible foreign investment legislation, with a strong regulatory bias. A government could turn the tap towards tighter control or towards promotion and less control through the rules and regulations to the law or
The National Investment Strategy approved by the National Executive Council at the end of 1976 gave prominence to
with influence in government.
Guinean business sector. There were also signs that foreign business interests could be compromising some of those
burgeoning urban unemployed. And it would take more time than most were hoping for to develop a solid Papua New
that it would not be easy to attract investors into priority areas such as manufacturing, which would help soak up the
India and a number of European countries. However, all was not rosy. It was becoming apparent to many in government
started pushing for more active promotion, which resulted in investment promotion missions to Australia, New Zealand,
considerable professionalism, and the country's resources were not 'sold-down-the-drain'. And indeed the Government
appropriate, foreign entities were to be encouraged or required to support local business entities. The strategy still
directly or indirectly (through, for example, the Investment Corporation of PNG) was also seen to be important. Where
nationals to establish their own businesses, although participation in the ownership of foreign sponsored projects
in priority areas was highlighted. The aim of indigenization was best seen to be fostered by encouraging and supporting
of Papua New Guinean businesses, particularly in rural areas, the important role of foreign investment and technology
of relief' on the part of the government and the affected enterprises. The teams working on the major projects displayed
crept through, one in fisheries where the 'pilot' project of a Hong Kong based company turned out to be a ruse to get a
shipload of prawns from the Gulf of Papua for the lucrative Chinese New Year market!

Surprisingly, it was easier to reach consensus on the approach to the large resource projects B principally mining B
which would be individually negotiated with conditions tailored, than on the more general and smaller scale
agricultural, manufacturing and service projects. The treatment of existing foreign-owned enterprises caused most
consternation, particularly how this should relate to areas to be reserved for Papua New Guineans (in the end it was
agreed they should be registered, but through a notification rather than approval process, although the registration
period was left open to the rules and regulations rather than the law itself). There was considerable debate about
incentives, and in the end it was decided that there not be any special taxation incentives, such as tax holidays, although
provisions in other legislations could be drawn on for infant industry protection if warranted.

The structure and operations of NIDA were heavily debated. The politicians and a number of senior bureaucrats
thwarted any attempt to have NIDA as a fully independent body, and thus final decisions on all projects were to rest
with the responsible Minister, although the Minister could delegate these decisions to the Board of NIDA. The Board
was to consist of senior bureaucrats - and representatives from the private sector - to ensure consensus across
departments, facilitating other approvals and limiting the scope for corruption. It was thought that a body of general
rules and regulations would evolve and NIDA’s regulatory role could be dispensed with.

Immediately after independence there was considerable anxiety in the expatriate business community, particularly in
small-scale activities such as transport, construction and retailing, as to how the new laws would be interpreted.
Although the establishment pains of NIDA inevitably led to delays in registration for the large number of existing
foreign businesses, things settled down fairly quickly and anxieties slowly receded. There was a rush of interest from
new foreign players (Taiwanese, South Koreans, Indian, U.S.) particularly for forestry and fishery projects, most of
which did not materialize when the proponents realized that PNG was not going to give these resources away. Most
new investors were understandably cautious, and placed a substantial risk premium on projects in PNG. The two largest
projects to be approved in the early years of independence were the Ok Tedi Copper Mining Project of BHP which was
negotiated in the build-up to independence without the involvement of NIDA - and the Popendetta Oil Palm Project of
CDC. A major forestry project proposed by a US consortium did not materialize, principally because of the insistence
of the proponents that the Government guarantee the loans, accepting all downside risk. A few not-so-good projects
crept through, one in fisheries where the ‘pilot’ project of a Hong Kong based company turned out to be a ruse to get a
shipload of prawns from the Gulf of Papua for the lucrative Chinese New Year market!

Overall, however, there was a discernible shift in the government’s comfort level with foreign investment over the first
couple of years of independence. Once the registration of existing enterprises was completed, there seemed to be an ‘air
of relief’ on the part of the government and the affected enterprises. The teams working on the major projects displayed
considerable professionalism, and the country’s resources were not ‘sold-down-the-drain’. And indeed the Government
started pushing for more active promotion, which resulted in investment promotion missions to Australia, New Zealand,
India and a number of European countries. However, all was not rosy. It was becoming apparent to many in government
that it would not be easy to attract investors into priority areas such as manufacturing, which would help soak up the
burgeoning urban unemployed. And it would take more time than most were hoping for to develop a solid Papua New
Guinean business sector. There were also signs that foreign business interests could be compromising some of those
with influence in government.

The National Investment Strategy approved by the National Executive Council at the end of 1976 gave prominence to
the role of the private sector as the prime engine of development. Although the principal focus was the encouragement
of Papua New Guinean businesses, particularly in rural areas, the important role of foreign investment and technology
in priority areas was highlighted. The aim of indigenization was best seen to be fostered by encouraging and supporting
nationals to establish their own businesses, although participation in the ownership of foreign sponsored projects
directly or indirectly (through, for example, the Investment Corporation of PNG) was also seen to be important. Where
appropriate, foreign entities were to be encouraged or required to support local business entities. The strategy still
reflected an interventionist and regulatory flavor - much more than, I am sure, many, including international institutions
such as the World Bank and IMF, would have liked - but it did indicate a loosening of the rein on foreign investment in
all but major resource projects and in the activities reserved for Papua New Guineans.

Mark LYNCH
Hindsight draft record, 4 April 2003

There are a few things I’d like to mention. We have not talked about taxation very much, but I have a compelling memory of a pre-1972 visit when Professor Ron ??Gates??, the Economics professor at Queensland University came up to talk to the Administrator’s Executive Council about a proposal to have a tax called the VAT, not the GST. He was asked to explain how that would work. I was asked to translate that into pidgin for the discussion. It was quite difficult to translate – other than to say that it is a tax on just about everything. There was a look of horror around the table and really the debate did not get very far at all. There was a quick retreat to further policy thinking about taxation options.

The question of corruption is an interesting one. There was a lot of emotion and energy absorbed by the beginnings of corruption. It popped up in all sorts of ways. The week after Self-government a representative of a European arms manufacturer arrived wanting to know what the small arms requirements would be for the prospective new ministerial line up. He did not stay long, but there was an almost endless procession of people who wanted to sell us aircraft, print the currency, produce statues of the Chief Minister, you name it. They were not always obvious. Some would visit ministers’ houses at night with contracts ready to be signed. Bear in mind that a number of the ministers were not really literate.

As Secretary to Cabinet, I found some of these issues very difficult to deal with because there was more rumour than substance around. At what point did a rumour become elevated to be the subject of discussion with the Chief or Prime Minister? Some of the people who came were quite hard to get rid of because they ingratiated themselves with a number of players before it was more generally seen that they were carpetbaggers. I do not want to overstate it, but quite a few people had to put a lot of energy into avoiding a number of disasters in those early years.

The strengthening of the Leadership Code was an interesting case study. One of the major tasks of the Cabinet Secretariat when the National Coalition Government came together was to encourage and foster a unity within the Cabinet when it came to decision-making. A lot of the discipline that was imposed around the Cabinet process was designed to remove from the cabinet room as much argument as possible before issues were discussed. In other words, to try to get the facts right at least before an issue was brought before the Cabinet. Those rules stood up pretty well through that transition period and there was an enormous amount of work undertaken in the Administrator’s Executive Council and then later in the National Executive Council.

The strengthening of the Leadership Code came about in a less cohesive and consultative manner than most other items that came to Cabinet. When it was introduced, it was not introduced in a way that ?? provided. It was the one significant exception over those first few years. It was put on the table and there was disagreement and it led to the breaking up of that coalition. To this day, from a policy point of view, I can see a lot of argument in favour of it. In terms of process, it damaged that coalition quite strongly at the time. I do not want to make a comment of the values of it, but there certainly was a need to have strength in the ability to handle corruption, but it was not an easy thing to establish across the board ?? ?.

OLEWALE

I vividly remember Rabbie Namaliu, Tony Siagaru, Mekere Morauta and Charles Lepani preparing this leadership code. But they made a political mistake. At that time I was in the Cabinet. They only met with the Prime Minister Michael Somare and they excluded all the other people. At that time I was Deputy Leader of the Pangu Pati in the parliament. I was not informed and unfortunately Sir Julius Chan, the People’s Progress Pati leader, was not informed. No one was informed except the Prime Minister. So the Prime Minister himself brought it to the Cabinet and we were all disgusted. Matters have to be discussed with ministers before bringing them to the Cabinet for approval. Julius became very angry and so did I, that we had not been consulted. It looked a good thing, to control corruption. At that time, really, there was no corruption. Maybe those four people had a vision that in this country the leaders are going to be corrupted in a few years’ time. It was a good idea but the way they presented it, they forgot about the politics involved: it was a coalition government and we should all have been consulted. Consequently, we said no, you did not consult us. From that juncture, Julius Chan said that he would resign. That is when that first coalition fell apart. 1977.

Today corruption is a huge problem. In Thursday’s paper I read that a well known businessman in Lae, Bob Sinclair a naturalized citizen, made an exclusive statement. He said that there is corruption and stealing everywhere. How are we going to stop it? This is the big question for PNG. I know that at the time when I was a minister, these things were happening. Once I was approached by Australians – one was a banker, one was a TAA airline manager – and they wanted to bring in Russian deep water fishing to PNG. I do not know how many times they came to see me. I was the Foreign Minister and they wanted this fisheries licence to be given. I told them that they should go to the Fisheries Minister and explain this, not me. They kept coming until they finally got tired of it.
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Now you can see, in the PNG context, those ministers who did not understand the ramifications of getting involved with foreigners who want to bring in their best mates, or ask for ministers’ favours, how easily they would fall for it? I believe this is what has happened. I left parliament in 1982 and I am happy to be sitting outside, I can really now see crystal clear the kind of things that are happening that are not good for PNG. I am very sad because when we formed the Pangu Pati, we called it the party of ordinary grassroots people. We were not interested in becoming rich men. We were interested in shaping the country for our people because we realized that we had all these natural resources. That was what the World Bank people said on Friday. Compared with other developing countries, we have all these resources, but our infrastructure is falling apart.

Today I am the Chancellor of the University of Goroka. The land problems I come across there are enormous. For instance, where the university is now standing, right in the town, the village people are now demanding compensation, although there are clear papers showing that the state bought that land from the original landowners in 1947. But now some people want compensation – they closed the university twice last year. I had to go to Sir Mekere Morauta who was then the Prime Minister and ask him for money. There was a court case about this. Unfortunately, the National Government lawyer did not represent the government. The Land Court Magistrate gave the land to the original owners. And he said that this land now costs K$7 million. Where will we get K$7 million? Last year they came and asked for K$500,000 to start with. You are telling us that the National Government is considering re-introducing into court, or there is a negotiation so that we will be paid some sum of money. What could I do? I had to pay. Fortunately, the government gave us the money to keep them quiet for a while.

Regarding coffee growing, I have noticed around Goroka that many coffee plantations have been abandoned. There are original landowners coming and talking to me and the university administration that the university should buy this land, as there is limited land available in Goroka. If we were to move, I asked, how could we be certain that there would not be more compensation claims? (Tom Leahy has said that coffee was a booming industry in the highlands.) Today it is not. The University Council considered the idea of buying the Kama Plantation and thought there might be some benefits if the Agriculture Department and the University used it as a teaching project for the students. After the meeting, I was met by one of the former leaders who was a member of parliament in Port Moresby. He told me to keep my hands off otherwise we will storm you. I asked him if he owned the land. He said no, but he had a claim on it. These kinds of arguments go on and on and on. We have a real problem with corruption and I do not know how we are going to solve it.

WOLFER

It would be appropriate for us as Australians not only to be critical, but to be self-critical.

The first instance of corruption I came across was in the early 1970s when a private accountant, probably corruptly I guess, gave me a copy of a report investigating a major co-operative activity in PNG involving MPs. This was well before Self-government. Written across the top of it by a senior Administration official was NOT TO BE PROSECUTED ON THE GROUNDS OF THE DAMAGE IT WOULD DO TO WHITE PRESTIGE. I saw other reports of a similar kind at the time. I am not saying they were rife. I’m saying that they existed. It is apparently not corrupt for the former Director of the Liberal Party to be appointed the Administrator of PNG or for one of the major coalition partners to be involved in PNG policy in order to avoid certain commodities being grown in PNG or exported. We need to be fairly self-critical about our own involvement: the number of people in the Administration who turned out later on to move on to plantations in areas where they had work as kiaps, the people who moved on from government departments into the private sector agencies or corporations that dealt with the same government departments. In other countries there were rules about this. I am suggesting that it was moderately prevalent but I am not suggesting that everybody was involved. We need not to suppose that it all began at some magic date in the 1970s or 1980s. I do not believe it did, and I think we are doing a disservice to the character of the Australian official involvement as well as the modern history of PNG to do that. The reality is that in PNG small scale corruption barely exists. On a day to day basis you do not pay people to do their jobs. On a day to day basis, you are rarely but sometimes stood over to make a donation to the person wearing a uniform, or whatever it is, to indulge them.

I have some difficulty about the starting date of all this and the way it is being portrayed.

I would also like to make the point that a political account of the same events that were so economically successful might look rather different. The most obvious thing that one would be tempted to say is that the areas where development was greatest in the early 1970s are the areas where the government has the greatest difficulty in managing
social tensions now. I have been involved in this for the last few years, so I am not speaking abstractly when I say this. The areas where inter-ethnic tensions have been particularly serious have been in fact often in areas where there are oil palm plantations. The areas where the potential for violence and disorder have been greatest have also been the areas where there have been large scale natural resource development projects. So that an account of the economic successes of the 1970s looks very different, studying the politics of the same processes ten or fifteen or twenty years later. I think it behoves us to put them in that context. I think I share Ross’s view on absolutely everything he said about what it looked like at the time, but it seems to me that the accounting for many of the activities that we have been celebrating nowadays would look rather different.

I also want to make the point that what we are describing as development in the period we are talking about is also the source of many other difficulties that we are now faced with. To take a very simple economic point, the World Bank blabbers on about poverty. The issue in PNG is not poverty, it is impoverishment. It is poverty caused by processes of development, it is the redefining of subsistence affluence into poverty in new circumstances.

Some Papua New Guineans I talk to – not many, but some - would share in this kind of account of the period that we are all collectively engaged in. They would actually attribute many of the problems that they now have to grapple with to the very processes that we are describing.

I also want to say that we need to be very careful to distinguish between the ordinary processes of democratic politics and corruption. I am mindful that, on the one hand, we preach political responsiveness, but if an MP builds a road to his electorate, it is now described as corrupt. When I went to school, that was regarded as looking after your constituents.

I argue, then, that we need to be fairly careful in what we are saying. Small scale corruption, for example, is not the problem. Corruption did not begin at a certain date in time. Development of a certain kind may look very different in a different kind of framework. And Australians are not exempt from that. One of the problems we face, I would certainly argue with contemporary Papua New Guineans, is that it certainly suits many Australians to believe that, somehow or other, the sources of corruption are all rather different. I would be rather less confident about that than a lot of people have been.

When I talk about the issues that have given rise to the problem, do I know the answers? The answer is no. And did I think that many of the things happening at the time were motivated by the best of all possible motives and by the best of all possible people, yes. But the accounting today would look rather different.

Hank NELSON

This is a very general point. Historians want to know who it was who was forming policy, who was driving the execution of policy. What has been manifest here today is that there are very many different points where that driving execution can come from. It can come, of course, from the Department of Territories here in Canberra, it can come from various other Commonwealth departments: Foreign Affairs, Defence, Treasury. It can come from the parliament and it can come from both the opposition and the government here in the parliament in Canberra. In Port Moresby you have the Administration, the parliament, and as Keith Mattingley reminded us, you have a press, public opinion and you have voters across that PNG landscape. As historians, we are extremely grateful that many of those nodes of possible power, influence, solicitors of policy are represented here. This is quite extraordinary. This is an unusual assembly.

But I am also reminded that there is one factor missing from this – and appropriately missing – and that is Australian public opinion. It seems now to me extraordinary that this responsibility of Australia, the creation of a neighbouring nation (in spite of Gallipoli or in addition to Gallipoli, all the other ventures that Australians have had overseas) is probably the most significant single engagement of Australians overseas. It generated no real fire in the Australian public. You can think about comparable cases of nations with close and significant colonies: the French and Algeria; the British and Ireland; and what that can do to a French or a British government. I suppose we could exaggerate all this and say that there was no elector in any electorate in any Australian election whose vote was swayed by the current government’s policy towards PNG. The Australian public is not represented here. The Australian public is scarcely represented in this significant historical event. I wanted to draw attention to that.

LEAHY

I introduced two Integrity Bills in 1970 as a private members bill. Although I belonged to the embryo cabinet, I asked permission and was granted it to pass these two bills.

When we were on the Constitutional Committee touring Africa, the Chief Justice of Ghana was Edward Adobu. He was
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jailed by both the British colonials and later on under Independence by Nkrumah. He had an audience with Michael Somare and myself. His main theme was that unless you control corruption before any form of Self-government comes in, you will never control it. He begged both of us to work on bills that may lead to just that. I put to the House the Parliamentary Integrity Bill and the Public Service Integrity Bill. I also wrote to every notable person in the country that I could think of -- and all the high schools – and asked them what they thought of it. I wanted opinions. Of course, I had to talk to Lord Chief Justice John Minogue of PNG at the time to ask him to be chairman of it because the Chief Justice of Ghana had emphasized to us that you had to have someone who was totally divorced from the political machine. Of course, the only people who could fill this niche were the judiciary. And if that falls, then the country collapses with it. So while you have an independent judiciary, these laws could be maintained.

I was able to pass the Parliamentary Integrity Bill with flying colours, but the Public Service Integrity Bill was massively opposed by the public service – and the private business sector, amazingly enough. They launched a program against it and barely won, by two votes.

I just thought I would make this an early warning of the corruption that the Chief Justice of Ghana said had destroyed Africa more than any other factor.

DABB

Regarding what Ted Wolfers said, I think he opened up quite a few paths in this maze.

There is an international non-government organization called Transparency International. They have headquarters in Germany. There are Australian chapters that are extremely active. There is also a very active PNG chapter that is chaired by Tony Siaguru. They have a website which you can consult and they put out press releases, they call for all kinds of action to be taken. I think this is most impressive. I cannot imagine anybody in Australia who ? ? putting out such high material. They are practical, they are alert, going to the ? ? of investigation, making submissions to relevant agencies.

I think that is an extremely promising sign. I do not think that PNG itself lacks the means to begin to address it. I think it is all there. The answers are probably contained within PNG. It is just a question of people beginning to address it.

Going back to what is probably the main question from the point of view of this ? ?. I disagree with Ted that this was something that went way, way back and the old anecdote about corruption early on ? ? earlier on shows that it has been going on all the time. I think all the evidence – this is an area where it is extremely difficult to make scientific enquiry ? ?. So far as perceptions are concerned, I think that having all the evidence of that kind, it leans the other way. This a relatively recent development and is ? post Independence.

There was a seminar, I think in 1999, on crime in relation to PNG, and its implications for Australia. Sinclair Dinnen gave a paper. Hank Nelson gave the wrap up ? ? important. But perhaps the most valuable part of that was the contributions by the Papua New Guineans who attended. Their evidence was that ? ? recent ?. In particular, the Chairman of the Ombudsman’s Commission, Simon Pentane, gave an excellent paper in which he really drove home the cultural nature and the pervasive nature of corruption. He did not go into numerous anecdotes, but over several pages described the career of a Member of Parliament. How he began, what his aspirations were, how did ? ? in the Parliament, and traced them all through. To become a ? ?, decisions he had to make and how he handled his ? in Port Moresby. I think this was an extremely persuasive and telling contribution to the discussion. It brought home the fact that corruption and the difficulty of grappling with something that is not ? ? as crime. ? ? ?

Now coming to the question of a definition of where it begins ? ?. There is a fairly concise definition of corruption. There is OECD -- they grapple – many countries oh we’ve got a gift culture, this sort of thing goes. ? ? doing business with this country or that country, we can’t function. Papua New Guinea has not put that quite so clearly and with as much reason as many other countries have, the so called gift culture. But the OECD Convention does grapple with that. There is a definable thing, corruption, and there are practices that ? ? corruption and I think questionable ? ? ? extortion ? ? improperly use their power ? ?.

As for Australia’s contribution, Australia is particularly bad with issues of private interest and public duty........ There was not until very very recently an attempt to bribe a Commonwealth minister. By contrast, what PNG did in identifying the problem and ? ? and the idea of the adoption of a Leadership Code and having something more ? ? Leadership Code, an Anti-corruption Commission ? ? way ahead of ? ? and it was developed and designed by Papua New Guineans themselves. Their concern and their willingness to do something about it, I think, is shown in the ? ? ?.
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Perhaps the final point insofar as damage is concerned, it is certainly damaging to the political system and to investment, and to the ?? summed up in one word, and that is perception. The extent of it, the origin of it, does not matter. There is now a perception that there is active corruption, without even going into the reasons for this, and that public is damaging both to good government in PNG and ?.

GARNAUT

When the questions were asked the importance of cash cropping, it was very important to people’s livelihood on the plantations and a way into the cash economy for many people in one after another of the highlands province. Village cash cropping was a very important source of income. But as a source of potential revenue for the government, it was just tiny. In the first full year of Bougainville’s operation, its taxable revenues were much more than twice the value of all of the agricultural exports that had been developed over the previous century, and the potential contribution of that to revenue around that time would have been certainly less than 10 per cent of the Australian aid transfer. So it was very important to people’s livelihood but quantitatively, as a tax base for the new state, not important.

There actually was a period of quite strong growth for cash cropping immediately after Independence, especially the continued spread of coffee through the highlands. The big investment in making the Highlands Highway serviceable all the way through to Enga and the Southern Highlands came just about the time of Independence and there was quite a big payoff from that while the road still worked, but the costs and difficulties of maintenance meant that gradually that had broken down. But there was a continued spread of coffee: again, very important to people’s incomes but much smaller than the other things in terms of the financial contributions to the financial base of the state. Regarding the cash cropping and agricultural success story, quantitatively, the only one was that large enough to make any significant contribution to the financial base of the state was the palm oil which we have already discussed.

That leads on to Ted’s point. I said that the economic success stories from what I call the World Bank period, 1964 to Independence were the Bougainville mine and palm oil. As Ted rightly pointed out, these had ambiguous political effects. I am not so sure of the palm oil, actually. I think, when you look at the whole of what is happening in Western Province or Milne Bay, it is pretty generally good. There are political problems, but lots of benefits line up against that. One cannot look at the subsequent history of Bougainville without feeling that if one had one’s time again, it would have been better if it had not been there because the tragedy was of such huge dimensions, once it unfolded. For seventeen years that mine operated with hardly a day lost through any sort of civil or industrial disturbance, a record quite unlike any major mine in Australia. Then the pylons were blown up and a little while later the mine closed and it would never be opened again. During the 17 years it was open and for several years before, the training program at the mine was of immense dimension. The base of trade skills in PNG today is still very heavily influenced by the training that went on at the Bougainville mine. Many of the managers in the private sector – big things in that sector – had backgrounds in Bougainville Copper. But against all that is what 1989 and the subsequent years have done to stability, national morale, to the effectiveness of systems in the administration. Certainly one has to at least ask the question about the balance of effects. A separate question is whether the breakdown in 1989 was an inevitable consequence of the mine’s existence. I think it was not, but that is a complicated story in itself.

Just another detail on the mining petroleum story. There is not much action now and the question was raised about the prospects of gas development. It is very hard to get new large things going in PNG now after what happened in Bougainville and after BHP was badly harassed by international NGOs into giving its equity away. But through the ages there was quite an extraordinary level of exploration activity and new mineral development of PNG. The level of exploration through much of the 1980s exceeded that in all of sub-Saharan and black Africa. That was noted in commentaries of the Commonwealth Secretariat at the time. That led to the Misima mine, the Porgera mine, the Kutubu ? development and more recently the Lihir gold mine.

That has all become very much harder now, largely because of the perception that has emerged over the last decade that PNG is a very difficult place to do business with.

Finally, a few points on corruption. I think it is very important to the economic policy story. It is not just perceptions. The amounts of money we have trashed in corruption, the destruction of the National Providence Fund, the largest corrupt transactions actually involving Australians at the other end, who continue to get rich and, in some quarters, honoured citizens of this society. The quantities of resources diverted from proper purposes through corruption has been very large.

In my introductory remarks, I talked about naivety, about managing this at the time of Independence. The Leadership
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Code, both episodes, what was put into the Constitution by the Constitutional Planning Committee, that is a very effect? things that continue to happen against corruption still to a significant extent. From that, it is rather remarkable episode that came in from the side through the political processes and the unsuccessful attempt to strangle the Leadership Code. But putting those things to one side, what one is struck by when looking back is how little this was considered as a central issue in the lead up to Self-government and Independence, and how in the early years of Independence Papua New Guineans of goodwill like the senior public servants whose names have been mentioned a number of times thought that things would be managed through the general mechanisms that were in place and through good people in the right places stopping things one by one. The attempt to strengthen the leadership code was really a recognition by those senior public servants that they could not. They did not have enough arms, one by one, to stop corrupt developments. Makere Morauta talks of his remarkably productive period as Prime Minister, as a reform Prime Minister, and says that he devoted 95 per cent of his time to stopping his ministers stealing the state’s money, and doing what he could in the way reforming in the other 5 per cent of his time.

Over time, focus went increasingly on institutional mechanisms for reducing opportunities for corruption; hence the Morauta government privatization program. All the state owned businesses simply became avenues for private appropriation of public assets and public money. Telecom had five chief executives in three years, each with a huge five-year contract, the Minister having to sack them after six months and give them their pay outs. This caused destabilization of business and a huge drain of funds. The institutional response to that was privatization. The institutional response to the corruption of the National Providence Fund was a government superannuation funds was Morauta legislation was complete independence, with directors not being appointed by Ministers but by agencies in civil society. Recognising that the task of privatization was not going to be completed in his Prime Ministership, he put all the shares of state-owned enterprises into an independent public business trust, the directors of which were appointed by agencies of civil society – Transparency International, the Institute of Directors, the Chamber of Commerce – out of the hands of politics. That has been partially reversed in the last few months.

Increasingly, among Papua New Guineans who thought about these things, the focus came to be not on relying on good honest people in the right places stopping things that they saw, but institutionalizing the limitation of access to resources of the state. Some people see that as a constraint on the exercise of democratic prerogatives, which I suppose it is in a way. But some Papua New Guineans ended up thinking that integrity was worth enough to trade off some ministerial powers and responsibilities.

WHITLAM

I am sorry I won’t be here tomorrow. It has been very enlightening to see the variety of backgrounds of the considerable number of participants today. I’ve certainly learnt a lot about it.

I wanted to say something about the corruption. Earlier in the discussion on this, there was the very shrewd comment – I made it myself some years ago – that PNG was exceptional in that except for the proximity of France to Algeria, there was no colony which was so close to its imperial power.

I may rely too much on this, but my obsessions, I suppose, have always been to get things on the statute book and to have international conventions enacted so they are administered by ministers and public servants in Australia and monitored by our own courts. I’ve had very limited success in getting all these things up. What impressed me very early was the Tariff Board system. The Tariff Board would give very informative reports on the history and the economics of all the matters that could come before it. You could see all the arguments and the statistics. They were very illuminating. But there was a procedure that the minister could always impose a provisional emergency tariff. That would operate for a year or so before it could come to be confirmed or rejected by the Tariff Board itself. This always happens where there are executive exemptions such as in tariffs or where there are colonies where decisions are made by the executive, and the general population do not have the votes or political power.

There have been examples mentioned again during the afternoon about decisions in what PNG could produce. For example that PNG people were discouraged from growing peanuts, or from growing rice, or producing coffee. That is because there was a very strong domestic constituency in Australia wanting to see that PNG and the Northern Territory did not compete with existing producers in Australia. When we mention sugar – well, sugar is not in too good a position in Australia now – but in each of these cases, one must ask why it is that a political unit such as PNG did not produce things which some parts of Australia produced.

But the great thing we have to do is to see that Australia, which was the origin, the ‘inspiration’ of governance in PNG,
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how we do it ourselves. I remember when we were in government we put up a proposal for a purchasing commission. It was knocked back in the Senate, of course. The grounds for putting it up were this: where governments were the main or a substantial source of contracts for purchasing things, then there ought to be some body which monitors how they were to be purchased, what the choices should be. In particular, it was quite extraordinary that men who had been Heads of the Post Master General’s Department immediately got board positions when they retired. An amazing number of Admirals or Air Marshalls, sometimes Generals but after all there’s not so much money in guns, but there was an extraordinary amount of the principal purchasers, say, of telecommunications equipment or of aircraft or of ships are in fact people who later, with extraordinary coincidence, would always get board positions from those departments. Later on, when I was again in opposition, this question was the subject of a Committee of Enquiry chaired by Nigel Bowen. Now Nigel Bowen was undoubtedly a very good jurist and the first Chief Judge of the Federal Court. He enquired into the whole of this situation. Quite frankly, nothing came of it.

In Britain there has always been the provision that a person who was in charge of a government department should not take the job related to his former department until two years after he had ceased to be head of that department. The extraordinary thing was – I do not want to be too specific – that this is not heeded in Australia. The recently retired Minister for Health and Minister for Defence immediately have got very lucrative retainers or directorships. I can well imagine people in PNG saying who are they to tell us how to go about these things.

We had quite a deal of difficulty – we did not get it up, but it has come up since – there was a Committee of the two houses to make recommendations on this subject and also a declaration of interest by members of parliament and it was suggested that should also apply to journalists who were accredited to the parliamentary press gallery. This was regarded with askance, but we did get up a procedure for members of parliament – it only applied at that stage to the House of Representatives, it never got through to the Senate – for members of parliament to register with the Clerk of the House the shareholdings and directorates that were held, and also by the partners and close family members. It was chaired by Joe Reardon and the Deputy Chair was Sir John Marriott from Tasmania. Because of that, John Marriott was not chosen on the Senate lists for Tasmania following the 1975 dissolution and the reason was defeated, but not for that reason.

The simple situation is, how well do we in Australia provide a model for governance. PNG’s origins were Australia – New Guinea since 1918 and Papua since 1906. How admirable or efficacious are the means that we provide? What sort of example do we provide in Australia? By and large, there is a safeguard in the declarations of shareholdings and directorates which the two federal houses have. But we still have not got this idea of what happens to former departmental heads or leaders of the armed forces. What sort of an example do we set? Quite frankly, we are seen to be fallible. The British may be a bit purer. There have been a few references to the judiciary, but in PNG the judges were often given highly political jobs to perform.

The position of judges under common law is very much in question in our area. Nobody really thinks much of the common law judiciary which Singapore and Malaysia have inherited. Everybody says that the judges are the best money can buy. We talk about other judicial systems like the Roman law? system, the one that you get in most of Europe, particularly, say, in France, and the system which we apply in Royal Commissions: finding out the facts and then prosecuting the people. But they give evidence on the basis that what comes out against their will cannot be used to prosecute them afterwards. So the Royal Commission system which is the Roman law situation that you get in Europe, that does not work that well here. And the common law system that we talk so much about, people in Malaysia and Singapore regard it as a joke: that is, they wear raiment and wigs, and they are called milord – they love it. Because nobody trusts the judicial system there.

So when we’re talking about corruption in PNG, what sort of an example do we set? Until we fix here, the situation which comes from executive fiats or appointments to ex-departmental heads and so on, we are really in no position to criticize PNG.

I gather that PNG does not have so much corruption as you get in places like Indonesia where you have to pay for an ordinary certificate or service, but I would like to say that we have to take the motes out of our own eyes where we see systems being rorted. We have to show that the common law system can be honest, when we show that the parliamentary and ministerial systems have accountability, then we are in a position to lecture, to monitor, to patronize our former colony.

OLEWALE
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In 1974 the PNG government brought in a policy of buying plantations throughout PNG from expatriates. At that time I was the Commerce Minister. I went to Mt Hagen with a cheque to buy two plantations. The recipients were Piplika Association. Their chairman was Michael Mel, by profession a lawyer. He said that Thomas Kalaleo was with him. There was a big ceremony. The Australian people who owned the plantation were all there and we had a big mumu, I think 70 pigs were killed. I gave the cheque to the Australian man who was selling to the Piplika Association. A similar thing happened in the Eastern Highlands, the Bena Development Association which was led by my friend.

The sad thing is that those plantations only ran for a few years because of the lack of good management. That is one big failure throughout PNG. There are no good management skills among Papua New Guineans. As Tom Leahy said earlier, the planters always brought in good management, but there was not enough time to pass their experiences on to PNGns. It is sad to see plantations all over PNG overgrown. People bought them, ran them for twelve months or so, then forgot about them.

Talking about peanuts. In the 1970s, there was a peanut factory started in the Markham Valley and peanut butter started being sold in supermarkets. But one day a was brought to the Cabinet. We had to make a decision because we were advised that our peanuts were no good – there was something wrong with the seal on the bottle. Cabinet decided that we should not continue with that factory. It was closed because of health reasons. Boiama Sale, a minister who came from Morobe had brought this matter to the Cabinet. Thereafter we returned to buying peanut butter from Australia.

Then when I was the Foreign Minister, I signed an extradition treaty with Australia, but many Australians who commit crimes in PNG find it very convenient to leave the country and then come to Australia before they are able to be investigated. (Maybe I will talk about this further tomorrow.) But with this saga, there were Australian businessmen involved who had left the country once those pilot committees started investigations. They are now down here in Australia.

I was wondering – we have an extradition treaty with Australia – why hasn’t our government raised these matters so that these people could be brought back to stand before a valid commission of inquiry.

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* Land: land tenure (the 1971 Legislation) and the problem of land disputes.

Land Reform : 1971-3

Alan Ward (prepared paper)

Customary land

Today over 97% of land in PNG remains formally under customary tenure, despite many proposals, before and since Independence, to bring much of it under registered title. The issue is highly sensitive. On one hand customary land is the fundamental ‘social security’ system of the common people. Amid the vagaries of politics and the economy, the lowliest of villagers are entitled to access to clan land where they can build houses and grow food. Land and kinship is the basis of their belonging, their identity and their value system. For these reasons, while willing to enter into all kinds of temporary exploitations of land, most react with the greatest suspicion towards proposals to alter customary tenure fundamentally or permanently.

Yet very good reasons for modifying customary tenure have long been obvious:

1. While a great deal of cash cropping takes place on customary land, individuals or groups are inhibited from investing more labour and capital on farming land to which they don’t have clearly defined rights. The search for vitality in the rural economy and rural life is inhibited.

2. Internal migration (partly caused by absolute land shortage in some communities but also by the point just mentioned) would be assisted by clarification and legal protection of the rights both of migrants and those to whose land they migrate.

3. The state needs to acquire land for public purposes in the short, medium and long term.

4. Foreign investors need security of title for their ventures and joint ventures with citizens.

The pressure to define and formalise land rights, or to ‘register’ them (not necessarily the same thing) is thus shaped by
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needs over and above the particular demands of colonisation. Unless changes are made, customary land tenure may
become a shell, protecting empty villages whose young have gone to the squatter settlements about the towns – where
new land problems arise.

Australian administrations began to address these problems after World War II, mainly to encourage participation by
villagers in the cash economy. Much of the effort was local, linked to Local Government Councils and proposals for
village courts. It tended toward the development of ‘local land rules’ rather than full-blooded tenure conversion and
land registration. That is, it envisaged some definition of land rights by village communities that would enable
individuals and families to grow cash crops. It was not much concerned with transfer of land outside the community.
This was hey-day of the ‘didimen’, fostering ventures on customary land. Men like David Fenbury felt that useful
progress was being made.

However, in 1952, under pressure from the United Nations, Canberra secured the enactment of a Native Land
Registration Ordinance. This established a Native Land Commission, essentially of Australian field staff, to identify
and record native title rights over much of the country, at the same time locating ‘ownerless land’ for development by
the state. The attempt broke down from naivety. Many planners have difficulty apprehending the fact that Oceanic
land tenure systems are not based upon neatly bounded human clusters (clans or tribes) within tidy boundaries which
simply have to be sought out, mapped and registered. The reality is that different levels of the society – individuals,
families, extended families, ‘clans’ and ‘tribes’ commonly exercise different kinds of rights in the same land. Neither
the human groups nor the territories in which they have rights, are neatly bounded. Asking them to define continuous
external boundaries, sharply separating one group and its lands from the other, is to set a rather unfamiliar task. It can
be done, especially in relatively homogeneous societies, if the people have the motivation. But it is not simple. The
Native Land Commission soon got bogged down in hearing disputes.

In 1962, Hasluck tried to make a radical breakthrough. He was convinced that customary tenure was a hopeless mire,
edemically prone to disputes and suitable only for short-term crops, and he was impressed by the progress that PNG
farmers made on land leased from the Administration (blocks relinquished by white settlers). He determined to press
for more ‘tenure conversion’, taking land out of customary tenure into a form of title created by the state – a title which
could be passed on from fathers to sons and support long-term investment of capital and labour. He was also a
centraliser, suspicious of different kinds of local titles issued by groups which themselves had uncertain title and tenure.
The outcome (drawing on British experience in Kenya) was the Land Titles Commission, to systematically determine
customary rights in a series of ‘adjudication areas’, assisted by ‘adjudication committees’ of local people, and the
registration of the land under a Land Registration (Communally Owned Land) Ordinance, or in individual title under the
Land (Tenure Conversion) Ordinance.

This approach had real possibilities, if it had been attempted quietly in a few areas, as an adjunct to efforts to clarify
land rights through Local Government Councils. Unfortunately zealous administrators began by covering the country
with adjudication areas and appointing thousands of adjudication committee members. Relatively little was done on the
ground. The Land Titles Commission too soon found itself heavily involved in resolving ‘disputes’. There was still
little recognition that disputation over rights to land is a normal part of PNG life, where tenure has to be constantly
adjusted to take account of demographic flux, succession, marriage connections and local movements. Or that the
demarcation of discrete individual, family or clan interests involves all those with intersecting interests relinquishing
them to each other within agreed boundaries in an essentially new distribution of rights. But after much effort and
expense in resolving ‘disputes’ 34 schemes were inaugurated around Popondetta and the Gazelle, resulting in 1725
smallholdings being demarcated of which only 337 had been registered by 1978. (Larmour 1991:51-72)

There were other areas where the Administration revealed its inexperience. One concerned the question of survey
and/or demarcation of boundaries. Before the advent of GPS systems, full survey in PNG was very expensive. It is not easy to cut and maintain lines, nor did the jungle and swamp lend itself to photogrammetry, as did the padi rice fields of Indonesia. There was a likelihood that the cost of survey would be greater than the economic value of the improved title. Second, little thought seems to have been given to the skills required to maintain a land registry and keep up-to-date the registration of transfers and intestate succession. Third, it was by no means clear that many villagers wanted a fully negotiable title. Negotiability was important to the Administration, so that internal migration could be better managed and investors could buy land or lease it long-term. But villagers were generally more interested simply in getting clearer title for their own farms, assumed that succession to title would still be within the family and did not usually conceive of transferring it outside the community (Fingleton, 1981, in Larmour, p 59)

The Administration tried again in 1970-71. Once more British advisers played a key role, and once more the principal model was Kenya. Four related bills were drafted – 400 pages of text. ‘Systematic registration’ was favoured although ‘sporadic registration’ (registration of the interests of an individual or subgroup, in isolation from those of the wider group). The Land Registration (Communally Owned Land) Ordinance of 1962 was suspended (being unused and redundant) but under the new bills land could be registered in the names of individuals or groups. The registered titles were to be ‘fully negotiable’ and elected committees of the owners would be empowered to deal with the land as if they were ‘absolute owners’. Leases and sales, but not mortgages, were subject to approval by a local, district or central ‘land control board’, according to the size and value of the land and the nature of the transaction. It was anticipated that with the land clearly defined and the ownership clearly defined, direct dealing between nationals would be facilitated and the messy tenure situation in the squatter settlements resolved. But expatriates were also expected to take leases or freeholds and capital investment would be greatly encouraged. There were strong socio-economic arguments in favour of some such measures.

The bills were introduced into the House of Assembly in early 1971, with considerable fanfare. This package was to be the foundation of an economic take-off for a territory which, it was now accepted, was being prepared to self-government and independence. In 1971 however, few, if any, foresaw how quickly this was to come. Pangu was a fairly small group in the House. The more conservative United Pati seemed larger and stronger, and enjoyed the confidence of the Administration, with whom it cooperated. It seemed likely that the land bills would easily be passed and the Administration could get on with building machinery to implement them.

My involvement came about by accident. As a visiting lecturer at the University I asked the venerable LMS missionary, Percy Chatterton, a Pangu Pati member in the Assembly, to speak with my first-year class on ‘conversion to Christianity’. I mentioned that I was writing on the radical transformation of Maori customary land tenure in the nineteenth century - measures which had purported to assist Maori and settler alike in economic development but which had simply resulted in a welter of highly dubious dealings and the loss to Maori of all but 6% of their land. Mr Chatterton mentioned that the land bills were before the Assembly but they were vast in size, scope and complexity, and the inexperienced Pangu members felt unable to develop an informed critique. Would I read the bills and offer some comments for the guidance of indigenous members, of whatever political allegiance? In reciprocation of his favour to me I agreed, and that evening he dropped off at my house the alarmingly large pile of documents. I sat down to reading them, and a day or so later put together seven typed pages of comments.

It was obvious that a great deal of thought and hard work had gone into the bills, and that there was considerable merit in what was being attempted, but certain features rang alarm bells for me, in the light of what had happened in New Zealand, and in the Cook Islands.

My main concern was the combined effect of creating fully negotiable titles and giving committees of registered owners power to deal with them as absolute owners. This had been done in New Zealand in 1865, with the consequence (as in
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Hawai‘i) that the chiefs, formerly constrained by customary relationships, succumbed immediately to the pressures and temptations to get the money that they so desperately needed, and sold off huge areas of the tribal patrimony. Or they mortgaged the land, and the mortgagees foreclosed. No trusts were stated or implied in the titles or the legislation and with the customary underpinning stripped away by tenure conversion, rank and file Maori were legally helpless. Even when, in 1873, it was provided that all the owners be named on the title and each owner’s signature had to be purchased, the patrimony was whittled away, because the undivided interests were severally negotiable. Purchasers could accumulate them until a majority had been acquired and the title was then partitioned. That is how, over about 50 years, Maori lost their land in a sequence of purchase and partitions. Equally seriously, while this was going on, they were distracted from economic use of the land, set against one another, and went down in a welter of litigation and survey costs. New Zealand today is still deeply damaged by the effects of this disaster, and is trying to restore some land and resources to Maori through the Waitangi Tribunal of the Department of Courts.

In 1971 I feared that, with the best will in the world, the Administration was stumbling into equally dangerous waters, and needed at the very least to amend the bills to make the titles less fully negotiable and the powers of named owners less absolute. The Administration expected that landowners would be protected from excessive alienation by ‘land control boards’ set up under the Land Control Bill, one of the four in the package. But I did not trust control boards. Bureaucratic ‘Trust Commissioners’ had proved very weak reeds in New Zealand, and I expected that PNG boards would quickly be dominated by the more entrepreneurial PNG nationals, who would favour their own kind or be bought by foreign investors. This might produce some spectacular economic development, some of it probably quite sound and some of it shallow and fly-by-night. It could also produce serious land shortage for many. What would happen in peri-urban settlements was difficult to imagine, but some urban planners, trying to get to grips with the situation, wanted the bills to go ahead and direct leasing between PNG nationals to be facilitated.

Introducing the bills in 1971, the Director of Land, Surveys and Mines, Don Grove, said that the intention was to proceed cautiously, and only where there was a clear demand from a community to introduce the system. Indeed, section 7, subsection (1)(b) of the Customary Land Adjudication Bill required the Administrator to be satisfied that a substantial majority of the customary owners wanted the land adjudicated. But Part III of that bill provided for sporadic adjudication and section 40 provided that ‘any person or group’ could move for absolute ownership of ‘any land’. Again I feared that, as in New Zealand, ambitious individuals could drag communities into the process with little understanding of the consequences. When I got to know him better in Australia, I quickly gained respect for Don Grove and believe he would have tried to implement the legislation cautiously and responsibly. In 1971, however, I could not help but note that in 1970, at the Fifth Waigani Seminar, he had introduced a discussion on the framework of the bills by referring to a statement by Hasluck in 1960, that the long-term aim was to introduce a single system of landholding, providing for individual, fully negotiable, registered titles. It was difficult in 1971, to shake off the suspicion that the Administration was still hell-bent on launching a complete social revolution – just as PNG was supposed to be moving into self-determination and self-government.

Nor, in 1971, was the possibility of a late burst of high colonialism unimaginable. Mr Barnes seemed to breath sympathy with the white settlers, and the United Pati was wanting to slow the movement towards self-government and focus on economic development, including expatriate investment and settlement. Proposals were still appearing in the daily press from expatriates wanting to develop the Highlands with indentured Asian labour. And as if to confirm my suspicions, a letter appeared in the Post-Courier of 10 June 1971 from Mr J K Smith, President of the Taxpayers’ Association of Papua, condemning the Land Control Bill as ‘iniquitous legislation’ because of its undue restrictions on capital. The possibility of right-wing, neo-colonialist programs emanating from conservative party victories in the approaching PNG and Australian elections was not wholly far-fetched.
My brief paper for Percy Chatterton did not discuss these political matters, but they did impel me to make a fairly rigorous critique of the bills and to offer a less revolutionary approach, which would still promote village-level economic development. This was to be based on ‘occupation licences’ such as had recently been proposed by Jock McEwen, the New Zealand Secretary for Maori and Island Affairs, who had chaired the UN Visiting Mission to PNG in 1968. Informed New Zealanders had realised how damaging to Maori society had been the British drive for individualisation of tenure. They knew that the same mistake had been repeated, to some degree, in the Cook Islands. In little Niue, McEwen’s department had resolved to let custom remain the underlying land law, but to provide for registrable rights of occupation, essentially formalising agreements of a contractual nature among villagers, whereby some individuals or subgroups would be accorded exclusive use and occupation of certain areas of land for a certain time. The 1968 Visiting Mission had endorsed the principle of promoting individual freehold tenure in PNG with obvious reluctance, and surrounded it with provisos. They suggested that an occupation licence should be acceptable as the basis of loans from the Development Bank, and that the village cash economy be promoted under such licences. This seemed an obvious alternative to suggest again in 1971. Interestingly, by 1973, lending authorities were actively moving towards a similar concept via the Clan Land Usage Agreement.

Chatterton pronounced himself pleased with my paper and suggested that we run off enough copies for each member of the House. He distributed them on 3 June 1971. There immediately erupted a barrage of criticism of the bills from indigenous members, United as well as Pangu. Public meetings took place in Port Moresby, including a very well-attended one at Hohola. The essence of the criticism was that, whatever the merits of the bills, it was not appropriate in the context of movement towards self-government, to launch major changes in land tenure. The Administration half-conceded the point and on 16 June withdrew the bills, with a view to reintroducing them in 1972. Don Grove was entitled to his wry comment that he had long invited discussion, perhaps by a select committee of the House, but had had no response until this eleventh hour convulsion. I felt embarrassed that my paper could have had such an effect, when I had only hoped that it might lead to some amendments. But of course the paper was only the catalyst for indigenous members to express the very serious anxieties they had held all along. We now know that there is no matter on which PNG legislators are more sensitive.

Rather illogically, the Administration then marshalled the conservative members to defeat a motion by Julius Chan to set up a Commission of Inquiry into the bills and land issues generally. In late 1972, however, after the elections brought a Pangu-led coalition to power, the Commission of Inquiry was set up. Even before Labor came to power, Andrew Peacock was much less inclined to drive PNG land policy and much more willing to let it be shaped by the PNG government and Assembly.

The Commission of Inquiry into Land Matters was set up in 1973 under the chairmanship of Mr Sinaka Goava, a founding member of the Pangu and a man of great dignity and presence. Its nine other members included talented and experienced people from every region: Father Ignatius Kilage, Mr Edric Eupu, an experienced leader of the Popondetta tenure conversion schemes, together with younger men such as Mr Posa Kilori, a ‘District Officer (Lands)’ in the field administration, with experience on the Gazelle Peninsula. The others were Cletus Harepa (Deputy-Chair, Bougainville), Pokwari Kali (Western Highlands), Boana Rossi (Morobe), Donigi Samiel (Sepik) and Philip To Bongolua (East New Britain). There was a small expatriate support staff, including myself, Nick O’Neill (Legal Counsel) Jim Fingleton (Research Officer) and Bill Welbourne (Secretary). Over a nine-month period of touring and of hearing submissions in Port Moresby, opinion was sought from meetings at major villages and townships round the country and from many others with expertise, within and without the Administration, including overseas specialists.

The recommendations of the CILM are too numerous to detail here, but the essence of its proposals, as far as customary land was concerned, was that the 1971 emphasis on individual title be diminished, that some customary land should be
registered but sparingly, that ownership be vested in registered ‘land groups’ empowered to develop the land themselves or grant registrable or rights of occupation to some of their own number or to other Papua New Guineans. It was suggested that land groups might comprise a mix of people of common descent but also of shared locality, to take account of the fact that village communities, while based largely on common kinship, included members without blood ties. Full membership of land groups was to be limited by a residence requirement: genealogical descent alone (which, through succession, quickly tends to favour non-residents), was not to suffice. Registered titles were not to be fully negotiable freeholds, with alienation controlled by control boards. Rather, the limitations on alienation were to be built into the titles themselves and the general land law, though district control boards and a national board were recommended largely to oversee dealings in ‘national land’ (state-owned land). Direct dealing in fixed-term leases between citizens was accepted as necessary, but limited to prevent the country devolving into landlord and tenant classes, as in much of Asia and Latin America. Sales of land were to be to and through the national government only, and non-citizens could only acquire fixed-term leases. Custom was to remain the underlying law, with disputes settled, according to custom, in local land courts. It was hoped that through recorded decisions of courts a quasi-codification of local land law would evolve, picking up a trend which appeared to be developing in the 1940s before being cut short by Hasluck’s policy. Because indefeasible registered titles were likely to be required only in specific situations, and given the cost and difficulty of maintaining a land registry, it was recommended (controversially) that registration of titles should have the effect of offering ‘substantial’ proof of the facts recorded, rather than ‘conclusive’ proof, as in Torrens-type registration systems.

In short, the CILM wanted to see new forms of tenure evolve cautiously upon a customary base, along with a PNG form of ‘common law’ relating to land, rather than that customary tenure be radically ‘converted’ to a forms of title shaped wholly by statute and English common law.

Towards the end of the Commission’s deliberations experienced officers such as Paul Ryan of the Chief Minister’s Department warned that implementation of the tenures proposed would require a large number of trained staff. Proposals were therefore made for degree and diploma courses in ‘land management’ at the universities, drawing where possible on existing courses in surveying, valuation and forestry management, but with much more emphasis on customary law and its modifications.

Another sharp warning came from Peter Lalor, the Public Solicitor. Lalor had developed a hearty distrust of the capacity of law and government to contain human ambition and greed. Those with capital and influence would find ways of controlling land, he argued, whatever controls the law and administration attempted. He was no doubt right, to a great extent. Informal transactions had long been happening between Papua New Guineans in land still in customary tenure – customary ‘leases’ and customary ‘sales’, all highly informal, but in many cases positive and helpful to the parties concerned. Some resident expatriates too, such as Chinese traders, with money to invest, were getting involved in such dealings too, again sometimes usefully, sometimes not. And already foreign entrepreneurs were stepping up their efforts to control land containing valuable timber and minerals.

Some of the main recommendations of the CILM were enacted in the form of the Indigenous Land Groups Act 1975 and the Land Dispute Settlement Act 1975, but their implementation has been patchy. The net effect of the demise of the 1971 bills has been that 97% of PNG land still remains under customary tenure and customary law. For better or worse, the law does not usually protect the foreigner and the wealthy capitalist in permanent control or alienation of land, as it might have done if the 1971 bills had been enacted and then manipulated by investors and politicians. No doubt some opportunities for rapid developments have been inhibited. But the villagers, for the most part, still have the last word, and the land for the most part remains their fundamental security.

Alienated land.
1971 was also the year in which Jack Emmanuel was killed while investigating one of the plantations occupied by Tolai ‘squatters’, resentful that so much of their traditional territory had been alienated, and either not developed or developed in ways that did not include them in any meaningful way. This was the era of the Mataungan Association, and the radical campaign for Tolai self-determination led by Mr Oscar Tammur and others – a campaign whose objectives commanded widespread sympathy among Tolai – as against the Administration’s support for a ‘Multi-racial’ district council in Rabaul. Jack Emmanuel became the victim of the tensions created between two view of the future.

In 1971 the Administration was also holding firmly to the view that freehold titles should be protected by the state, and that the police should, if necessary, evict trespassers. It was a view based on western concepts of property rights and the importance of registered titles as the basis of economic advancement for all. A few Papua New Guineans had themselves become purchasers of plantations or other property on freehold titles. Since 1945, considerable effort had been directed to restoring the titles over alienated land, following the destruction of the New Guinea land registry in the bombing of Rabaul. All of this overlooked the cavalier ways in which much land in New Guinea had been acquired in the first place, (mostly before 1914), leaving some clans particularly land-short. This was the situation which Jack Emmanuel and his staff were trying to handle by mediation and policing. There was some tolerance of villagers’ encroachment on undeveloped land, but where they occupied developed plantation land efforts were made to eject them.

The situation the ground remained in a kind of impasse during 1972, as the focus shifted to national elections and the formation of a proto-government. But East New Britain was one of the first districts the CILM of 1973 was sent to, once it had cut its teeth on some issues in coastal Papua. It was with some astonishment that on arriving there in late March 1973 (where we were escorted by the Tolai member, Philip To Bongolua) that nothing much had changed since 1971. ‘Squatter’ occupations were still increasing and there was a general air of tension and uncertainty about the district.

Besides attending some hearings of the Commission in villages around the district, my duties including talking with senior district administration staff in Rabaul, reading some of the most relevant files and meeting expatriate organisations. The New Guinean Planters Association was one such. With Mr Goava’s encouragement I met its executive secretary, Mr Hamilton, and a group of planters. The latter were angry and uncompromising, not understanding why their land was being targeted by Tolai and disinclined towards any serious discourse with the Commission. Hamilton, on the other hand, realised that a sea-change had occurred with Gough Whitlam’s 1971 visit and the 1972 election, and that the old status quo would have to be modified.

It emerged in conversation with Hamilton and district staff that a real stumbling block was the planters’ high asking prices for their properties. Some were ready to take their families out of the district, but their asking prices were based on the assumption of a free market in land and strong prices for copra and cocoa, which they had recently enjoyed. Their stance, in some cases, amounted to an opportunistic attempt to hold the government to ransom. It also frustrated the efforts of moderate Tolai. For while they were often hot about wanting their customary land back, Tolai leaders generally valued economic development and were prepared to pay for improvements on the land. Some had even made efforts to accumulate money to pay the deposit on a loan from the government for this purpose, with a view to paying off the balance over time, but they could raise only modest sums. Cutting the gordian knot depended on valuation of the improvements, and acceptance of fair valuation.

The CILM was impatient about planters not accepting the government’s valuation, and was of one mind that if the land was urgently needed, and the planter did not accept the valuation, the government should acquire the plantation compulsorily for return to villagers. This was a step the Administration had been most reluctant to take, for its effect on business confidence and the value of property generally. But the Commissioners were men of the new PNG. I was instructed by Mr Goava to leave the group, return to Port Moresby, put before Albert Maori Kiki, Minister for Lands,
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the Commission’s view that the power of compulsory acquisition should be taken, and write a confidential Interim Report to this effect, ready for their scrutiny when they returned to the capital. This was done, and the Minister gave us to understand that he and the government were sympathetic to the proposals in the Interim Report.

The proposals concerning alienated land were elaborated in the CILM final report, released in late October 1973. Of the 1.4 million hectares involved, 160,000 had passed in freehold and 340,000 in leasehold to private interests, including urban as well as plantation land. The remaining 0.9 million hectares were held by the Administration, much of it undeveloped. Despite the strong demands to the CILM in all districts that all alienated land be returned to the clans, the CILM was also moved by the arguments of Ron Crocombe, that the government should retain a great deal of it, in a new category to be called ‘national land’, because it there would be a great need for it, for public purposes, including urban expansion. Areas where villagers were really landshort were to be identified and there that land was to be returned. Valuation for unexhausted improvements had been discussed with the Valuer-General, and a formula was under consideration, based (for plantations) on the net income of the property, averaged over a period of years and multiplied by a certain factor. There was urgency in East New Britain and adjacent islands; since the Interim Report villagers had moved onto several more plantations. Consequently it was recommended that the existing Lands Ordinance be amended to include among the public purposes for which land could be compulsorily acquired, the resettlement of Papua New Guineans. The holders of undeveloped land were to be given the option of submitting realistic proposals for the development of the land or relinquishing it to the government for redistribution, without compensation for diminution of title. It was confidently hoped, however, that the passage of the valuation provisions through the Assembly would reassure planters that they would be paid for their valuable improvements, and reassure villagers that direct action would not be necessary. But a rotating fund was needed to provide for the loans to villagers to enable them to buy back improvements at low or no interest. The government had already approached Australia for such a fund – an estimated $2 million – but had been refused. If the government wanted to divert money to this purpose, Canberra stated, it must take it out of the general aid funds. The CILM recommended a fresh approach for a special fund, based on Australia’s responsibility for alienating the land in the first place, or maintaining the German and British alienations. This was not Robert Mugabe’s Rhodesia: an orderly and principled recovery of alienated land was envisaged, where necessary, but financial assistance was needed, to resolve the tensions on the ground.

The CILM thought that in many cases the return of alienated land to villagers was not necessary. In some areas there was no pressure from villagers; indeed some land had been alienated so long ago that attempting to find the ‘real’ owners would have stirred up more problems than it would have solved, especially in the numerous situations where people from other districts had migrated onto the land, as much as two generations previously. However it was recommended that the public ownership of all freehold land (including urban land) be gradually asserted, and (where land was not required for land-short villagers) forty year, renewable leases granted to former freeholders (60 years to citizens). The object was to give control of alienated land to the government, and access to the added value; and to limit private speculation in land. It was considered that a long lease from the government would give greater security to expatriates than would freeholds, which tended to become the focus of anger in times of nationalist fervour.

All these matters were discussed by the CILM with great reasonableness. Because they came from all walks of life and all districts, and faced different kinds of needs and pressures in their home areas, all points of view were represented and extreme views tended to cancel each other out. All in all, the steps taken between 1971 and 1973 were serious and thoughtful attempts by the administering authority, and then by the proto-government, to come to grips with complex land issues and offer reasonable policy options. It remained to be seen what the Australian and PNG governments could together achieve in regard to these issues.1

1 Peter Larmour (ed.), Customary Land Tenure: Registration and Decentralisation in Papua New Guinea,
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Jim FINGLETON (spoke to a paper)

I came on the scene when powers over lands had largely been transferred. I had a minor role in some of the lead up but I was more involved after the transfer, that is, after 1973. My background is similar to Nick O’Neill’s. It was in the Public Solicitor’s office, working as the lawyer for Papua New Guinean claims, usually against the Administration in trying to recover alienated land. I joined the Commission of Enquiry as their research officer and when the report was presented at the end of 1973, one of the recommendations was that there should be a Policy and Research Branch set up in the Department of Lands to be responsible for bringing forward the recommendations in the report for consideration and implementation, to the extent that they were adopted. I was head of Policy and Research in Lands Department, 1974-78. During that period we did bring forward quite a number of policy proposals, because we were not doing much research.

My own research came after that. I realized that there was still a lot I had to learn

KERR

As a matter of information for participants, in July 1970 the ministerial arrangements provided for only an Assistant Ministerial Member for Lands. Among the powers that were transferred at that stage – this is July 1970 under the Gorton initiative – were, among other things, policy relating to the registration of customary land, land use policy, leasing policy, land use rights under mining legislation, and town planning. Then later in that year, in December, that list was increased to include grants of leases, acquisition and reservation of land for purposes associated generally with the transfer of Ministerial and Assistant Ministerial Member powers, conversion of customary land, town planning, valuation. So, on paper at least, by the end of 1970 there was quite a massive amount of land policy and land use transfer.

Perhaps it is an example of the fact that perhaps this was still not exercised by indigenous members, but by the Administration that the land laws were introduced later as an Administration initiative. I am not quite sure to what degree the then Assistant Ministerial Member had a role in that. This is perhaps an example of the powers being transferred on paper but not able to be exercised for all sorts of reasons.

CRITCHLEY

In PNG at Independence, there were so many emotional issues including the Constitution that it would not have been practical to ‘draw’ out one that is so difficult to manage as land ownership. I do not think it would have been the time to try it.

TOLOLO

Land in PNG continues to be a problem. We continue to argue even after title has been given to other people. Just be listening to a number of comments so far, is there something can be done about it. A number of those policies have been put aside and not been implemented. But at the time we were talking about, Independence, land was not a big issue. Now it is coming up again. And as Jim pointed out, a lot of problems are still problems. What I am saying – I am

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appealing – is there something which those people who have been involved with – Jim and others, can you come back and see what can be done?

LEAHY

This is an extremely difficult problem, one of the worst that PNG faced pre-Independence and I think the problem is continuing. However, I would like to say that I have never known in our society why people that have something on their land or that belongs to them, why they aren’t compensated when the government moves in, to the value of something. Now we land rates in Australia where every three years a valuer re-values far or city land. I have always wondered why we never implemented this type of thinking also in New Guinea – that where land was alienated, that some sort of a rates scheme would be paid on the wealth being derived from those lands. In my own case, as I mentioned yesterday, the local villagers offered the whole of the Markham but when they saw the wealth that was going to be generated from those magnificent soils, their attitude changed, and they were left in limbo, because I think they were only paid one pound ten shillings an acre. That developed a resentment, but we were able to overcome that by leasing land. So we leased land, brought the villagers, and we paid them 20 per cent of the gross that we got. When I planted peanuts, the whole village would come down and we would walk up the rows and every fourth or fifth row, I said, that’s yours. When we got to the end of the cultivation of peanuts, I or one of the educated villagers would work out that that equates to 100 rows. We would mark out 100 rows and I would say, that’s yours.

We could have leased land in that Markham Valley and up in the hills. They were pouring in to us to work their land to give them a cash income. I did not care whether they sat on their backsides all days. All I was interested in was growing a crop. And it was much the same later on with our cattle. This system in the Markham worked extraordinarily well. When Bougainville came on stream, and I was in parliament in the ADC, I could not for the life of me see why something could not be done for the local villager – not the God damn state, not the country – look after the person who maintains very adamantly that God – their sanguma, their masalai, their spirit men – has given them that copper in the ground. Why we only paid them a pittance – a man walked down with a bag on his waist with money. Every tree he came to, he gave them a bob. Every pig he saw, he gave them K20, and so forth: the value of the land lasted a day. There was no long-term tenure.

I was in Port Moresby at one stage when there was a major dispute with the Hanuabada over the land there. They were being paid very little, if anything. I could never see why they were not included as part of the funds of the rates collected for those lands with all the buildings. When we go back to the original tribal situation, they do not own land as we own land. They had certain rights, they had tabus. One had a tabu for a coconut, for the water, for the fish – everything had a family tabu and he owned it. They could not eat it, they could not destroy it, they had to talk to it to keep that particular tabu healthy. Now anybody who worked the ground, cut the kunai to make houses, had to pay a tax to the owner of that land. That also helped them desperately in their old age. That was the big thing, and I think it is something that our Western culture has not accepted that that, with marriage and children was their old age pension, and land was very valuable. That is the way I saw it, and I still wonder today after listening to Jim and Allen and others, they have taken it to a scale, but again they have forgotten from whence the grass roots, the whole philosophy, came.

TARUA

In 1972 I was a young lawyer and one of my first jobs was on land claims of indigenous people. I had a big fire and I had to go to the land claims in the Port Moresby area to prepare them for hearing. That year there were also claims in New Ireland which I worked on. There were also land claims on Abau Island which I was assigned to. I went down with the Land Titles Commissioner to Abau and did ?eight?. Of course the government was represented by myself and the Land Titles Commission ?allowed? the other side who were unrepresented. They lost the case and that caused a big riot.
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on the island. Fortunately, maybe the Land Titles Commissioner knew, he had a police squad there. So the Land Titles said you better go back to Port Moresby. You are in here. So I was taken through the crowd, everybody was yelling and shouting, and I was taken to Robinson River and flown out.

What I want to say is that it was a hollow victory in a way because I felt for the people that they are not represented to the Land Titles Commission. I do not know whether Nick or Jim might clarify this for me, whether the Public Solicitor’s office did they have customary?.

I just want to say also that there were a few cases that we had to look at. Unfortunately, by the time I was going to go to New Ireland to do the cases there, I was transferred to the Chief Minister’s Office.

Nick O’NEILL

We used to provide Legal Aid to people, particularly in matters against the Administration, but the resources given to the Public Solicitor’s Office were not great, and I think there were limits. I cannot remember that particular case, unfortunately. I know we certainly weren’t in everything because we did not have the resources to be in everything. But the Administration, of course, did have the resources.

OLEWALE

Land is a real problem in PNG. Sir Alkan has said this. I knew when we were in government that there were lots of problems.

When the first explorers or British government agents went to British New Guinea, they proclaimed land for the state, what they thought was waste and vacant land. One of the first things that Sir Albert Maori Kiki, the first Lands Minister in 1972 when Pangu led Self-government, in one of our first meetings, said that that was not good because they were foreigners – what was vacant to their eyes was not vacant to Papuan eyes. When I think about that, it sometimes hurts me.

We, as a state government now, must take all that land back to our people. Those lands that were classified as waste and vacant must now go back to the original owners.

Looking in retrospect, what happened at that time, we lost a lot of government land. I don’t know how our thoughts were going. There we were on the threshold of becoming self-governing and independent, and we as a governing body then, gave that land back to our people. Today in PNG one of the most difficult problems is starting businesses on native land because there are huge compensation demands, as I mentioned yesterday about Goroka University. If you look at where there are big mining projects going on, there are still land problems. People bring very unreasonable demands on the mine explorers.

Recently there is a Papua New Guinean lawyer, Roli Henao, and he is going round villages selling his idea whereby native land can be used for business purposes. An investor can come and put money, if he wants to run a business on that land. He has devised a scheme where even the banks can be assured and insurance companies can be assured that whatever business is established, the business will pay whatever mortgage they have signed with the banks or insurance companies. Land would still belong to the people and people would be compensated some percentage of that business so that will feel happy and free that they are getting something from the development of their own land. He is thinking that this could apply on a wider scale so that if there is a mining company or big investment going in, and there is a certain piece of land they want to establish their business on, a percentage of profit or whatever from that business should go to the land owners, so that they are receiving some money all the time.

Tom has really conjured up the idea that should have been exercised in PNG. That is why today we have so many land
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problems and I believe these are going to stop good development in the country.

WARN

If anybody wants to be reminded of the events of Emanuel’s death, there is a very good novel by Trevor Shearston called *A Straight Young Back*. It is a terrific read, but it is very evocative and descriptive of Papua New Guinean customs, the situation of the Administration, the conflicts on the Gazelle at that time.

WARD

Just on the last point, I’m not sure how fair Shearston was to Jack Emanuel, in his interpretation.

It is easy to be very pessimistic about land matters. In response to Sir Alkan, I do not think there are quick and easy answers. If you look at the history of western Europe, the English took two millennia to evolve something that works in a modern situation. Some things like running a Land Registry Office are some of the most sophisticated skills and tasks that a modern civilization ever evolve. It is not likely that these things will happen fast. One can only patiently try to build the infrastructure, as PNG is of course trying to do.

The reason I do not need to say anything more, really, is that two optimistic comments were made by Tom Leahy and Sir Ebia Olewale about land, both, significantly, building on a customary base as what the principle of existing... pursued, rather than too much radical and total alienation or tenure conversion. The people are still involved, they are still entitled to a share in the commodity prices that the land produces, or in the added value of the land which is perhaps one of the most fundamental goals to be pursued which reassures people that they have not lost control of their land or their lives or their futures.

My bid would be along the lines of what was being done in the days of J K Murray and David Finbury and those early Administrators of the 1950s – a more gradualist approach, drawing upon local skills and local knowledge, and a close engagement between people who can use and grow things on land... and the local people, not a divorce between the two. The task of Administration is to try to assist these sorts of... marriages and engagements. I like the sound of what Mr Ramani Henao is apparently trying to do, but my word of caution would be to be careful about the length of tenure you grant to these outside investors because sometimes the grant of longer leases and mortgage arrangements can alienate land from people almost as effectively as the transfer of the freehold. But it sounds like a promising local initiative, and I would like to end with that note of optimism.

DENOOON

I would like to add something. By the time the Bougainville mine closed, significant sums of money were going to landowners, real and putative. That was part of the problem. Let us remind ourselves that what began, what sparked the violence in Bougainville was the dispute among claimants to that flow of funds. It is a terrific idea to share with the land owners but ‘land owners’ is not a simple concept. Nigel Oram told me that there is no such thing as land ownership, there are only land claims, and they overlap and they change. To imagine that a simple cash payment every now and again to a defined group of people is going to solve a problem ignores the fact that it creates as many problems as it resolves.

LYNCH

My first real experience of land disputes was in the Upper Chimbu Valley, the most densely populated part of PNG. There were, I think, at the time about 900 people per square mile. So you can imagine that was considerable scope for disagreement about land tenure in a situation like that
I think back on one of the earliest times when I offered to try to mediate such a dispute. The concept that was still prevalent was the one that Allen talked about: that whoever was resident on and controlled a piece of land at the time of contact was seen to be the perpetual ongoing owner of that land. The elders were there, the young people were there, there was a line of tangkets which was the traditional boundary. People were saying, look, it’s obvious that’s the boundary, and the older men were saying yes, but if you dig over there – we’re talking about a distance of about two or three metres – you will find the roots of the older line of tangkets that used to be there before. I mean, how on earth anybody could negotiate or mediate on what was ever a fixed boundary in that situation – to me it was just impossible. The thing that is amazing is that while there were land disputes and fights over land, there were so few of them in such an intensely inhabited area and where there were so many other changes occurring.

The other little story I’ll tell is that on Misima Island there was a very old clerk who was half blind and he could not really see the typewriter. He was kept on well beyond retirement age because he was the only person in the government who remembered all the various disputes over land in the area. The files had been lost during the war and Kenneth Kaiw stayed on to advise everybody about what had happened pre-war in terms of land disputes.

It is a very difficult area, as everybody who has worked in PNG understands.

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OLEWALE

As we were moving, in the House of Assembly, towards Self-government and Independence, the question of national unity was very important. We had to achieve Self-government and Independence as one country.

But there were pockets of separatist movements in PNG. One of those was led by Josephine Abaijah who advocated separate government for Papua. Another was in Bougainville – it has come into reality now because Bougainville will be getting autonomy. There were others in East New Britain, the Tolai people particularly said they should be separate. But one way or the other, we came to the realization that we had to have one country.

I will be honest enough to say something also about myself and how I saw it. Foremost, when we were moving towards Self-government and Independence, I knew the historical background for both territories – the Trust Territory of New Guinea, and Papua which was a colony of Australia. Papuans were Australians. I had talked with many of my Australian friends, lawyers, one of them was Bill Kearney. One day he and I were in Port Moresby after the ?bank?. I said, Bill, maybe I should go down to Australia without any visa and see whether I will be arrested. It was a strange thing: Papuans had to have a visa to enter mainland Australia. I never actually attempted to do that as there was no time for that kind of thing.

When we were writing the Constitution I called Moi Avei – and Renagi Lohia, who is now our High Commissioner in Canberra, to my office. I said to them that there must be some clause written into the Constitution about Papua because we just cannot be obliterated from history. We have a certain status now, and the way we are going, there won’t be anything about Papua. The three of us had a talk. They left and they never came back to me. I don’t know what happened with them.

Josephine Abaijah was very strong, but her movement – many said that in Port Moresby, and among the womenfolk in Port Moresby, she really engineered them to come together. Josephine Abaijah and Dr Wright? then went to Mekeo, ? Bereina, south district of Central Province. They went on a DC-3 and organized a meeting there. They invited all the Mekeo chiefs. Somebody made a film of this. I’ll come to that. Dr Wright was telling them how they could blow up houses and bridges, and destabilize the government. When we learnt about that, the whole Cabinet was called to the office of the Department of Information in Konedobu, and in a closed room we viewed that film. It was sold to us, and
we saw Dr Wright actually telling people how to mobilize and how to destroy roads and bridges and houses. After we saw that, we had a meeting and Albert (Maori Kiki) who was in charge of Foreign Affairs and Immigration, deported Dr Wright. He was told that he was persona non grata and never to come back to PNG.

There were these kinds of movements going on, but I believe in the beginning we all resolved that we must have one country. In 1973 I was asked by Albert to go to New York to be present at the General Assembly. Before I went, my friend Paulus Arek was very sick in hospital with cancer. I went to him. I told him I was going but I wanted him to talk to me – I had a tape recorder. I asked him what he thought about what Josephine was doing, wanting Papua to be different from the Trust Territory. He told me that we must have one country and that I had to be strong in convincing our people. I went to New York with those thoughts. I was away when he died in the hospital right at the time of Self-government in 1973.

Bougainville has progressed so well. Now one of the things I also have to recall. In 1975, July, Rabbie Namaliu and I were asked to go to New York to appear for the last time in the Trusteeship Council meeting which would be the last meeting for PNG. In the Trusteeship Council, before we arrived, were John Momis and John Teosin from Bougainville. They wanted to put their case that they were different – they wanted Bougainville to be different from PNG. The Chairman of the Trusteeship Council was the British Ambassador. On the first day John Momis delivered his speech and the next day I gave my speech. Paulius Matane was then our Ambassador in New York. Rabbie, Paulius and I sat down in the night and prepared our reply to John Momis’s speech. My speech was the very last and after I made it, the Trusteeship Council said that they recognized only one country, Papua New Guinea, and that Bougainville could not be different. I vividly remember John Momis walked across the conference room, he came to me and shook my hand. In Pidgin he said, Mi les pinis. That is, he was very tired of pursuing this matter – he had been defeated in every move he made and he had had enough.

Rabbie and I went back to Port Moresby. At that time, July 1975, we were preparing for Independence in September and there was really a lot of talking and meetings going on. However, what I would like to say is that so many things were happening at that time and really, some events overtook us. Earlier today we discussed land matters. Land matters in PNG are very important, but I think in hindsight that at that time maybe we did not give much deeper thought to land matters and how to incorporate them into the new legislation.

KERR (for GREENWELL)

John Greenwell, who is unwell, asked if I could read his comments on the issue of national unity. He wanted to speak briefly about the United Nations, Papua and the Act of Self-Determination which was required to end the Trusteeship. I read his words:

National unity was the policy of all Australian governments and of the PNG government. New Guinea was a Trust Territory administered in union with Papua, a non self-governing territory but the separate status of both was unaffected. The discharge of the Trusteeship Agreement required a General Assembly resolution to be preceded by what was described as an Act of Self-Determination by the people of the Territory. Australia wanted a single majority vote by the House of Assembly in favour of Independence to constitute that Act of Self-Determination.

Bougainville’s secession was a much greater threat to national unity than Papuan separatism. The Government held few fears that the UN would require or permit a separate expression of view by the people of Bougainville because Bougainville was part of the Trust Territory and the UN had already expressed its view in favour of national unity. That, as people may know, proved to be the case when Father Momis sought UN intervention shortly before Independence. Papua was far less of a political problem but what Papuan separatism could potentially rely on was a legal lever. Because of the separate status of the Territory, it could be claimed that the peoples of Papua and New Guinea had to
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decide separately in favour of continued union. The Trusteeship Council had required separate plebiscites in the case of British Togoland and the Gold Coast in the British Cameroons and Nigeria. France, in particular, had always opposed the assimilation of non self-governing territories with Trust Territories. Sir Kenneth Bailey, the Solicitor General, had advised that, although a vote of the House of Assembly might be sufficient, it should have a majority of Papuan members. A Papua Action Group had been formed before the 1972 elections. ?Third? Council had moved in the House for a separate Papua. The Government accepted Les Johnson’s view that the prime object of the group was to redress economic disadvantage, and meetings were arranged in Canberra with the Minister. In 1972, however, Josephine Abaijah was elected and formed Papua Besena. The first plank in its platform was a separate plebiscite or ascertainment of view by Papua.

In June of that year the Government took this up with the UN at Under Secretary General level and with France in particular. It relied heavily upon the report of a visiting mission which had oversighted the April 1972 elections and had described those elections as ‘thorough, comprehensive and fair’. It was agreed as far as it was then possible to agree that the Act of Self-Determination for the discharge of the Trust Agreement would be a majority vote of the House of Assembly and that no separate ascertainment of opinion would need to be sought.

Those are John’s words about the mechanics, in a sense, of getting the sort of thing that Ebia has described far more emotionally as an eleventh hour, almost, plea to the UN by John Momis for separatism and the Resolution of the UN that PNG should go forward into Independence as a united country. Of course they did accept that Act of Self-Determination in the July 1975 meeting of the House to declare 16 September 1975 as the date of Independence for Papua New Guinea.

Peter BAYNE (another one not using the microphone properly)

Two things briefly. It did puzzle me as a resident of PNG in the 1971-75 period – and I mean Papuans – that there was not more objection to what was happening. I could understand the Australian Government’s imperative and possibly the imperative of some of the Papuan leaders. It was obvious that national unity is what being a nation was going to involve. It impinging on Papuans in various ways, right down to the village level. I recall going to ? ? down in Marshall Lagoon for a few days in about 1973-74 and their lifestyle was being impinged on by ? ? in other parts of the country and it was certainly making their life unpleasant. It always did puzzle me as to why there wasn’t more support for a Papuan identity ? ? because looking at it from their point of view one could see ?the interest in that? at that point.

Just to come to the other point that is going to impinge on the Constitution process which we will come to later. As a matter of ? up until a very late period of time the Constitution draft ? ? provincial government was not just an independent Constitution for aspiration’s sake, but there was some conflict as to what was going to happen closer to Independence in relation to provincial government and they were in the Constitution. I recall it was just before this was debated on the floor of the Provincial Assembly as to whether these provisions would be passed or not. I recall being in a meeting with Rabbie Namaliu in the back of the old House of Assembly and Somare walked in and said, They’re off. We’ve taken them out of the Constitution. ? ? And then they said they did not put forward ? ? I can’t recall the main ? but with the Pangu Pati backing, they were simply taken out and they were not enacted. It puzzled me then: why did that happen? I didn’t bother to pursue it then. But what I have learnt subsequently – and others here know a lot more about this – is that around this period of mid-75 there were serious attempts by some of the Bougainvilleans to obtain a separate status, ? ? United Nations. Secondly, there were suggestions that they were seeking retribution from the French and other powers.

Another event that did occur because it has recently been related to me by Professor ?Jack? Richardson/Nicholson? who
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is an Emeritus Professor at ?? University. He told me recently that about this time he actually visited the Solomons, Honiara, and met with a number of Bougainvilleans and others because he had received instructions to draw up a constitution for an independent Bougainville. So this was going to ?? it wasn’t enacted, of course. But what is clear, looking back at it, that may have been what lay behind why Somare, at that very late stage, simply pulled that out because I think it was clear then that there was an attempt ? no good faith, if you like, Bougainvillean side to be ?part of the system that was being enacted through the constitution. Or, on the other side, one could say ?Bougainville was acting in their ? own interest? at the time, and the central government simply saw they could not allow this to go on.

But just ?in terms of ?? what the book might contain, certainly there were events occurring which – Sir Ebia mentioned some of them, others I mentioned – to give Bougainville a separate status. I think that that was certainly a factor in why the Constitution did not say more than it did about provincial government.

NELSON

Putting things into a different context … One of the things that the Australians said was the end of their policy was Self-determination. That was a term that meant that we were meeting UN obligations with regard to New Guinea. But it was also such a benign end of policy that nobody could argue against it. So right through the 1950s and into the early 1960s Self-determination seems to be a satisfactory end of policy for the Australians. When we were required to talk about it, sometimes we could give the most broad statement: we were in fact saying to PNG you can have what you want when you are confident that you know what you want and you have the capacity to exploit whatever it is you decide that you want.

What happens, though, from 1966 is a cutting off of the options that should have – might have – been available under that broad umbrella of ‘Self-determination’. The first one is in 1966 and as we’re getting down to within seven years of Self-government – 1966 is when Guise’s Select Committee dashes down to Australia and asks if the 7th state is really still a possibility, and they are told that it is not. So that option has gone by 1966. There is still talk of a range of special relationships, an eventual close relationship which might be negotiated between Australia and PNG. Then over the next years all of those disappear and it becomes apparent that what Australia wants is Self-government and a rapid transfer from Self-government to Independence. All of this talk about Self-determination has disappeared and the end of policy is Independence and subsequently there might be negotiations about a close ? relationship that will be between two independent nations.

So what Self-determination comes down to, as far as Papua New Guineans are concerned, is influence on the timing of it, and that timing of it comes down to a narrowness of, really, months about when that can happen, and a reliance by the Australians on Somare’s capacity to hold that coalition together and on his capacity to carry the vote in the house in favour of Self-determination. Now that’s an aggressive perspective from the Australian side, and down-playing what is happening in PNG, but I’m just following through that notion of Self-determination and the Australians cutting off the options one by one, and pretty rapidly, in a narrow period of time.

A brief comment about the separatist and independence movements. What was muddying the waters so much during those years through 70-72, was that some of the most aggressive, articulate ones taking up the space in news comments at the time – the Mataungan association, Kabisowale, Papua Besena – were units without clear boundaries, so that if you started to talk about any practical ways, in a Constitution, of meeting what they were trying to articulate, it would have been extremely difficult. What would have been the boundaries around the Mataungan association, to give them a separate voice in the Constitution? Papua Besena was always thought that the Southern Highlands where the edges of that sense of Papuan separatists might lie. So Bougainville stood out as the one with a clear definition of its boundaries. But it really was effectively the only one, and so you had that muddying of all that. And we used to tussle about what
terms to use for these other associations. There were people using words like micro-national, proto-national, because they were not really separatist movements, and movements whose ambitions could be met by some defining clause in the Constitution.

**MATTINGLEY**

The South Pacific Post people were in touch with all these political parties that were being formed at this early period. I am thinking of two in particular. One was the United Party, which Tom Leahy knows well, and the other was the Pangu Pati which Sir Ebia knows so well. In both those parties, unity was reflected in their titles. I am wondering if Sir Ebia, and Tom, could indicate what they stood for and how their names came about. I remember references in the early days to some Bully Beef Club. Is that a fair question at this time, for national unity?

**LEAHY**

The United Party was formed by a very small group of islanders, but basically I was very much opposed to the party system in PNG. Even in the early days, in the mid to late 60s, I was of the opinion that if we were going to teach the people a democracy and how a parliament worked, they must be seen as individuals to make their own individual minds up on a vote, with only the Cabinet or embryo Cabinet remaining solid in its work on the floor of the house. This wasn’t to be. It was felt, there was tremendous pressure from Canberra at that particular time to form another party to get a party or a two-party system to equate the whole political advancement of the country towards future independence. So the United Party was formed. At one period they had the vast majority in the House of Assembly until the 1972 election. They had 55 members, I think. There were also Jim McKinnon’s Country Party and the Peoples Progress Party which Julius Chan formed. So there was a great flowering of parties within the political arena of PNG. Later on, Josephine Abaijah came in.

One minor point I would like to make about the Papuans being Australian, I think it has been mentioned where there was a very strong movement – I think it was a lot stronger than people realized – for Papua to become the 7th state of Australia. There was a very strong movement within New Guinea, particularly amongst some academic and legal people, also in Australia, and the general thinking in the country was that they could not see any reason why not. But, of course, the Australian government just would not have a bar of it. Also, we went to New Guinea in 1947 and I don’t think it was until the late 1950s or early 60s that a Chinese could move freely in Papua. So in Port Moresby and other areas of Papua you had no Chinese trade stores or anything. I think it was only after a special Australian act which I am not acquainted with, that allowed Chinese movement into Papua. And even when we were going through Papua on our way to New Guinea, this was always written on our permits to go through.

Remaining on the subject of unity, the great problem was within the country. How do we unite highlanders who felt so far behind the coastal people that they felt it was going to take them 30 years to catch up. This had a large bearing on the independence movement, and they felt very aggrieved that it may come upon them and they would be totally dominated by the coastal areas. I think eventually, except way out in the villages, as the people are now moving into the cities (it is an unfortunate social disease but it is a fact of life), children are born and raised in these urban areas and they lose their rights in the villages. I think one of the saddest things that I was aware of was to see children going back to the village and just having no standing within the village at all because their parents and their grandparents had been away in Moresby, Lae or wherever. This is creating a problem. But with the advent of the army and the police and various other institutions, and private enterprise, I think this urban population will be united. Moresby will have Moresby kids, the same with the European children. My own children, born in New Guinea, have tremendously strong feelings for the land of their birth. I think eventually that that will straighten itself out.

**WOLFERS**
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The first thing is that there is no very obvious reason for Papua New Guineans, in the period that we are talking about, to be desirable to be part of. Many of us who went there, having read books about decolonisation in the early stages, looking at internationalism and independence as inevitable, looking for certain kinds of phenomena that were not, in fact, necessary, in hindsight.

The Australian formula for self-determination, in a sense, bamboozled people and kept all the options open in a time when they were not. It is quite clear to any of us by the mid-60s that the disaggregation of PNG was not a real option, but it was very hard to get the Australian government to say that and I think it prolonging the problem.

I think it is also important to bear in mind that what we are calling anti-colonial nationalism had two components. One is integrative, and the other one is oppositional. I think we often in that period confused the opposition to colonial rule with populist rhetoric. But it did not mean it was there. One of the eye openers for me in the late 1960s was to become aware how those internationalist labels often had a definition of the nation inside their heads already in some of the exchanges on the floor of parliament which suggested very unpleasant attitudes towards their fellow citizens. And those part of the political environment.

I think it is important to bear in mind that turned out to be we need to look very carefully at the precise sequence of events that occurred, particularly in 1975. Although it looks, to a lot of Australians and to some Papua New Guineans for that matter, very obvious that people with different skin colours wanted independence, the reality is that when you deal with Bougainvillians, they do not distinguish between black-skinned people and the Polynesians who live there. They do talk about Bougainvillians in a way that outsiders have a lot of difficulties coming to grips with, and don’t make the very obvious ethnic distinctions. They also do note very important distinctions among themselves, but not on those lines. We need to – I’m not saying I understand this, because I’m on a heavy learning curve, but I think it is much more complex than is being described.

The move towards provincial government was a kind of trade off between those who were looking for formula for political mobilization and those who wanted to maintain a united PNG. You had people who were talking regionalist rhetoric which is a way, if you like, of accommodating East New Britain and Bougainville on the one hand, without facing the massive threat to national unity of highlands consolidation or Papuan consolidation. The Report is quite open about that. It gave a lot of people a lot of things without allowing the larger numbers to break the country. So I think you need to be very careful about the because there were people making bids, there was a government that was not honouring those bids, that was making counter-bids, and over a period of, particularly the 74-75 period, people were getting frustrated by the failure of government to respond. Government was getting frustrated by their failure to go along with the deal. Out of that came a breakdown. Suppose people walked in with specialist agendas and came out the other end with it, it would be such a misrepresentation of history, it’s really not worth discussing. It’s very superficial and it is not what happened. It is not what has happened in the last few years, although a lot of people think so.

We need also to bear in mind the disaggregating effects that political change had on PNG. If you analyse electoral behaviour in the 64, 68 and 72 elections, one of the ways people got elected was, in the absence of divisive policy issue areas, and that was very often the case, was to instant mobilization. So the instruments of forging national unity were also the instruments of forging division – not uniquely in PNG – but in many countries. Again, you got different trade-offs, but in parts of the highlands that I looked at and in parts of Sepik and Morobe where I looked at it, you got 95, 98 per cent block voting around particular candidates. People knew what they were doing and, in the absence of clear policy agendas, were mobilizing those instruments which were available to them.

Political parties did not come from nowhere and out of chaos. There was external pressure in some cases external issues. But it was actually possible, in the period between 68 and 72, to predict the formation of political parties. Now,
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If this does not sound contradictory, you could predict it retrospectively. Let me say what I mean by that. If you go back and look at how people were voting in parliament, and you analysed the progressive changes that were occurring, you could actually see the party forming. The four ... were always aware of the similarities in their attitudes and before they were organized. In a sense you could see the PPP forming. A couple of years before it actually formed, ... beginning to vote the same way and becoming conscious that they voted the same way. They were beginning to cooperate ... and then one day someone says, let’s form a party.

Now I’m not the only person to think this. I remember walking into the Davara Hotel when somebody was delivering ... printout? how people were voting in parliament. They were doing very similar analyses to what I was doing. What I was doing as an academic was not ... they were analyzing how people were voting and trying to work it out. Who would join the United Party, who would join another party? I think you need to be very careful of the dynamic situation in which politicians were interacting with each other with the national framework and local entities, and out of this emerged – it’s very difficult at times to comprehend political systems.

To try to pull that together, we are dealing with a period in which people are casting around for ways to get elected, casting around for ways to get personally important, casting around, in some cases, to ... core/call? support around political issues. All of those things, and sometimes very hard to distinguish and very often involving a great deal of inconsistent behaviour, and out of that you get certain movements forming, some of which persist, some of which break up later on, and so on.

I’ll close with this point. One of the ironies of the last couple of years, in meetings with the National Committee on Bougainville, in the last couple of years in which Josephine Abaijah was a member and listening to her talking quite firmly about the need to maintain the integrity of the state.

KERR

I certainly agree that the broad options were narrowing and the Guise committee had been told that the 7th state option was no longer there. There was, however, concern, particularly on the part of the committee that I worked for, that it clearly articulated the fact that it believed that there should be one country. I will read part of the ... Report. It says: One nation. The committee believes that the people of Papua and New Guinea are one people with one common goal: the common goal to develop the one nation and take our place with other nations of the world; that the nation should play a great part in the Asian and Pacific areas of the world.

It went on to talk then about the need for a single name, a flag, a coat of arms. I mentioned yesterday about going around and in particular talking about perhaps the country should be called Pagini. Well, it is quite obvious from that that the Committee was trying to bring together the words Papua and New Guinea. It got universal condemnation. Perhaps not universal. There was a later attempt, I think, in the parliament to talk about calling it Niugini. The interesting part about that was that I understood that that word meant ‘coconut stand’ in the Papuan language. Somebody got up and said that the only way they would vote for that was if it was pronounced ‘Papua’.

The other thing is that I think I am right in saying that, at the time, the UN’s view was against what we could describe as Balkanisation of states. It was against the break up of places. It would be interesting, in fact, if the same question went to the UN today, because there is much more of a realization of smaller entities having their own identity.

I think it was the Foote Committee, some member of which I watched in a couple of villages with the simple demonstration of picking up a stick and breaking it, and then saying to the community that if you have got a bundle of them, you can’t break them. That was unity. That was the UN demonstrating, in some sort of practical way, that one stick, ie, Bougainville or Papua or wherever might break, but a bundle of them held together were flexible.
It was my impression that Papua Besena had two objectives. One was more development for Papua and the other one was independence for Papua. I think the former was more important than the second, and that as far as any question of a separate state, it was probably only in Central Province and on the South coast, that there was ever any strong movement there. I must say that Josephine Abaijah was very active in promoting. She called on me at one stage with a replica of the gift that the British had given the Papuans in 1884 at annexation. I of course said that it was more appropriate that it be given back to the British.

Really, what comes out of this is that Bougainville is a much more serious threat to unity in PNG. I think it still remains a threat, and I think it is one of the things that the government of the country has got to work very hard at. They did not make an auspicious beginning. If my memory serves me rightly, on Independence Day at Murray Stadium there were no Papuan flags. This was a place where there should have been a mass of them. There might have been problems getting them, but it is something that had to be taken very, very seriously right from the outset, irrespective of the uniform agreement, because I think the House of Assembly voted without any objection to having a unified nation.

Another small point. There is one problem about national unity: there is no one language. It is very much easier to merge a nation with a single language. It does not have to be the majority. The Indonesians use a majority language when they have a major issue.

Sean Dorney

Just one thing. I played for the Kumuls in 1975 just before Independence and the team voted a Bougainvillean to be Captain.

Tololo

I’d just like to add that the promotion of unity was done by the education system. That was very important because school kids and the teachers did not know much about what was happening. We put a lot of effort into that, and we helped to organize the competition to have a flag and surprisingly it was one of the girls from a school in the Gulf Province who designed our flag as an outcome of that. So when you look at it, although they are small people, they participated actively to unite PNG as a nation.

The question about languages. You probably recall, in our school system we only had one language of teaching in all the schools. Agreed to teaching Motu in the south, pidgin in the north, we probably would have taught them, but we opted for English. A point of view, a uniting factor, that is why we brought in the English speaking teachers from Australia to take part in our E course program. Let’s unite the country, and that was our little contribution to it. So language still is an important part of our development, and we teach English still as a language in our school system. But now provincial governments are coming in with the tok ples. We do not know what is going to be the effect of that inform these people.

LEY

This issue of national unity during the secessionist movements was a fundamental task that the Constitutional Planning Committee was involved in trying to resolve. I want to say a few things in relation to what Sir Ebia said recently about the mission to the UN by John Momis and himself and to generally endorse what Ted Wolters said of the period in 1975 in the lead up to Independence. I discuss in some detail in my paper. But from listening to what Sir Ebia said a few minutes ago about John Momis’s reaction to the outcome of the UN, John Momis indicated that, for me, I can understand him reacting in that way, saying what he did. It is a pity that he is not able to be here to speak for himself. I
can’t actually speak for him, but I can, having worked very closely with him over three and a half years, from early 1972 to Independence, and then had contact with him since.

I am sure that there was a wealth of feeling behind what he said to you that he had done his utmost as a Papua New Guinean nationalist to achieve, through the work of the CPC and his other political activities to help to lead PNG to become an independent and united country. He had been unable to carry the Bougainvilleans with him – I haven’t spoken to him about this – but my sense is that he really was forced into the position of being wanted him to speak on their behalf to the UN because he was the Member for Bougainville. He said when relations broke down between Bougainville and the Government in mid-75 that he felt very frustrated that his efforts had not been successful. My sense is that he felt the ground had been cut from under his feet by what had happened ? the Bougainville government pressure group members who were former CPC members, and the way in which the change that had been made to the draft constitution had undermined so much of what appears to have been achieved in the debate in the House of Assembly on the CPC’s report and the Government’s proposals. Being close to the situation, I could see in the first months in 75 between February and June when I think John Momis went back to Bougainville, there was a sense that everything was slipping out of his grasp, that he no longer had any sense of control over the way that the Constitution was working out, that the issue of the funding for the roads in Bougainville between the Government and the Bougainville representatives over that matter. But, as I said in my paper, the Bougainville leadership, when they announced secession on 1 June 75 said, one, they were very frustrated about the funding of the roads, and two, they were very angry about what they called the Government’s tampering with the Constitution. I did not have the feelings of the Bougainville leaders at that time of going of what they said publicly and I’m reading between the lines in terms of John Momis’s decision, but we had been working ? him and the other members of the committee ? respective Chairmen very closely. He had also been ill – he had had to go to Australia in 1974, and – I just want to make clear that it is my view that he felt, what Sir Ebia said, that he had himself and there was nothing more he could do. My sense is that it certainly was not what he really wanted to achieve ? Bougainville ?. Everything he had done in those previous years was directed towards finding a way to accommodate Bougainville and all the other parts of the country, into a united country which was going to be united by agreement through the Constitution, and not require coercive force. As Michael Somare said in Sana, there were basically two alternatives. To get a united country, one was to use military force and the other was to reach agreement.

Australia took thirteen years of conventions, referenda by the states to form a nation. New Zealand was considering becoming part of the federation. In the process, it decided to go its own way. Western Australia was a reluctant part of the union, and in 1931 went close to leaving. So Australia is not so different from PNG. One other point, of course, is about languages – Australia has had the advantage of having a single language, if you exclude Aboriginal languages. We should reflect a bit, as we did yesterday, on Australia’s own conflict.

Challenges and Achievements of the Constitutional Planning Committee 1972-1975

JOHN LEY (prepared paper)

I have reflected on this crucial, turbulent but highly productive period of Papua New Guinea’s political and constitutional development in a separate paper. Here I comment on the composition, work and achievements of the Constitutional Planning Committee (CPC) and on:

• some of the challenges that arose and events that took place in the context of the debates on the CPC’s recommendations and the Government’s counter-proposals; and

• the controversies over the several drafts of the Constitution prepared by the Government’s constitutional draftsman.
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I also respond to some of the main criticisms of the Committee’s work.

My personal involvement

In September 1972, when members of the CPC, staff and most of the consultants were chosen, I was appointed Legal Officer to the Committee, seconded from my position as the first Counsel to the Speaker of the House of Assembly and the private Members. Interestingly, one of the main factors in my deciding to go to PNG in 1963 as a youthful Melbourne lawyer, had been hearing John Guise, then the leading indigenous politician, speaking on ABC Radio’s ‘Guest of Honour’ and encouraging young Australians to go to his country to contribute to its development towards self government!

I had no idea when I went to work in the Public Solicitor’s Office that, less than a decade later, I would work on proposals for the country’s constitution for independence. I was fortunate, in 1969-70, to undertake post-graduate studies of the independence constitutions of Commonwealth countries in Africa, the Pacific and in Asia at the University of London and to visit five recently independent African countries.

I was involved in constitution-making from the appointment of the Committee until the completion of debate on the final draft of the Constitution in mid-1975. My role after the CPC reported was as legal adviser to a parliamentary alliance known as the Nationalist Pressure Group (NPG) and Country Party. The NPG was formed essentially by former CPC members, in September 1974, mainly to press for the adoption by the House of Assembly and the Constituent Assembly, of the CPC’s recommendations. The Country Party, led by former CPC member Sinake Giregire, supported the NPG in the constitutional debates. (The Government had its own official advisers and the United Party, with the Government’s support, engaged Peter Bayne, a former UPNG legal academic who had acted as Counsel to the Speaker and the private Members of the Assembly during part of the period of my secondment to the CPC).

De-facto Chairman

Although Chief Minister Somare was ex officio Chairman of the CPC, it was envisaged by the Government that its leadership would be affectively provided by the Deputy Chairman, Fr John Momis, the Regional Member for Bougainville. He deserves particular recognition for his outstanding efforts, in the face of enormous pressures, especially from Bougainville but also from other parts of the country and from the Australian Government and members of the PNG Cabinet. I believe he was and is a nationalist, not a separatist (though Mr Whitlam has suggested otherwise) and strove until all hope of a reconciliation with the PNG government was lost, in mid 1975, before agreeing to become the principal advocate for the independence of the putative nation, to be called the North Solomons, at the United Nations.

In early 1976, negotiating effectively with Michael Somare, John Momis was instrumental in averting bloodshed in South Bougainville and was deeply involved in the process which led to Bougainville returning to the PNG fold on the basis of arrangements for provincial government that were heavily based on the CPC’s recommendations. Later he became Minister for Decentralisation.

Terms of reference

The CPC’s broadly defined task, endorsed by the House of Assembly, was to ‘make recommendations for a constitution for full internal self government in a united Papua New Guinea, with a view to eventual independence --- and to consider the mechanism for implementing the constitution.’ It was to be a ‘home-grown’ constitution (HAD III).

Various subjects were identified in the terms of reference, including the system of government - legislature, executive
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and judiciary; central-regional-local government relations; a bill of rights; emergency powers; an ombudsman, defence and external affairs; judicial review and procedure for amending the constitution. (HAD III). This was a much more comprehensive and detailed task than any of its predecessor committees had undertaken, but the CPC was originally expected to produce its report in a much shorter time than any of the select committees had worked to.

Undoubtedly the most difficult challenge that faced the CPC, as well as the PNG Government, was to put forward a constitutional foundation that would enable the country to be a united one - by choice. In the context of simmering separatism in Bougainville and Papua, great resentment and conflict in the Gazelle Peninsula, and considerable anxiety about independence in the Highlands, this was a formidable task.

Role and membership of the CPC

The select committee predecessors of the CPC had prepared the way for the final moves to self government and independence. However, the CPC was the first all-indigenous constitutional development committee and the first to be clearly independent of official Australian influence. Its members represented most parts of the country and a very broad spectrum of political views, from the most conservative to the most radical. Most were fluent English speakers but a small minority were essentially Pidgin speakers. (See Appendix 1). The one group that was clearly not represented was women, of whom there was only one in the House, Miss Josephine Abaijah.

The members of CPC almost broke up early in 1973 over, among other things, the issue of the appropriate role and composition of the advisers and consultants, about whom a number of members at either end of the political spectrum were wary. Yet after that tense situation was resolved by Somare, the group became extremely cohesive and effective and remained so, even after the Committee’s report was tabled in the House, 18 months later.

This was a tribute to the leadership of John Momis, to the members’ enthusiasm, professionalism, integrity and commitment to the task and their belief in the importance to their country of their report. Theirs was an outstanding team effort by a group of politicians many of whom were relatively inexperienced when compared, for example, to the delegations to the Australian Constitutional Conventions in the 1890s.

David Stone and Ted Wolfers have spoken of the approach the CPC took to its procedures. Because of the great importance of the consultation process, which was in many respects unique at that time for a developing country, I would emphasise that after analysing what they considered to be fundamental issues, the CPC members oversaw the preparation of discussion papers in English, Pidgin and Motu, dealing with most of the major issues. Arrangements had been made, by agreement between the CPC and the Chief Minister, for these papers to be considered by hundreds of discussion groups established throughout the country under the auspices of the Political Development Division of the Chief Minister’s Department. The Division and its Government Liaison Officers (GLOs) did an outstanding job, following faithfully the directions of the CPC to ensure that people were encouraged to think independently about the issues raised, yet using their field expertise to organise the groups effectively, do their best to enable the groups to express to the CPC members their views at public meetings, then to facilitate the submission of these views in writing direct to the CPC.

The committee members toured the country, holding over 100 public meetings, attended by many discussion group representatives and other members of local communities - an estimated 60,000 participants in all. The Committee visited almost every subdistrict and received hundreds of written submissions from discussion groups, interest groups and individuals. These were then analysed and, to the extent practicable, taken into account in developing recommendations.

Time-frame
When the Committee was established the Chief Minister said that he expected it would report by June 1973, in anticipation that PNG would achieve self-government later that year. This expectation was never realistic. However, when the Committee decided that it was essential that it visit virtually all subdistricts, rather than only district headquarters as Cabinet had envisaged, and became involved in the negotiations between the PNG and Australian Governments about the transfer of powers to ensure that its deliberations were not pre-empted by those transfers, the work was extended considerably, eventually taking 22 months from the date of the first meeting. This was no longer than the time taken by each of the previous select committees. It was also a very much shorter time than that taken - 1891 to 1900 - to develop the Constitution for the Federation of Australia.

The CPC report

The report recommended a visionary constitutional foundation for PNG as an independent nation, setting out wide-ranging proposals with detailed supporting material. The CPC recommended a constitution which sought to bind the country together, in a dynamic, forward-looking way by, among other things:

- setting out explicit national goals and directive principles
- emphasising that all constitutional power comes from the people of Papua New Guinea; stating that all entities should be responsible to the people, under the rule of law;
- providing that the centralised power of the colonial administration should be politically decentralised, to make it more accessible to the people, and constitutionally safeguarded, proposing a legislature that would have effective parliamentary committees
- proposing that there be no head of state - rather that the functions of the office be allocated to specified office-holders with self executing provisions dealing with the appointment and replacement of governments
- setting out firm citizenship provisions;
- providing for an entrenched bill of rights,
- establishing a strong leadership code;
- protecting various constitutional office-holders such as judges, members of a judicial services commission, a public prosecutor and a public solicitor; and ombudsman commissioners with wide powers and responsibilities:
- making provision for the role of the defence forces to be limited to limit their use by government to deal with civil unrest;
- providing for an independent body to recommend equitable funding for the various provinces
- proposing that the management and personnel functions in relation to the public service be separated; and
- entrenching the provisions of the constitution as a whole to varying degrees according their relative importance in terms of the need for protection

The House of Assembly debates on the CPC’s recommendations

The draft CPC report

When the draft report of the CPC was presented, on 27 June 1974, the Chief Minister and Deputy Chief Minister Guise,
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both members of the Committee, presented a minority report which led to expressions of anger by John Momis, John Kaputin and a number of other members of the CPC, who felt that they had done all the hard work and the two Government leaders, who had had little direct involvement, had come out with very different views on important issues such as citizenship, the head of state, power of the legislature, provincial government and a foreign investment code. (See Downs 1980: 505)

The draft report had been prepared with difficulty because two of the consultants had had their services dispensed with by the Government shortly before the draft was completed. They finished their work unofficially by letter and diplomatic bag from Sydney and Wellington. (Oh, to have had e-mail then).

Time was set aside during the June-July 1974 meeting of the House of Assembly for informal discussions about the CPC’s draft proposals and the minority report. I believe this was a significant and constructive phase in the sometimes acrimonious political debate on the CPC’s ideas and alternatives to them. The CPC took account of the content of these discussions in framing its final report.

The Final report
The CPC’s Final Report dated 13 August 1974 was submitted to the Chief Minister who tabled it in the Assembly. The report reflected its emphasis on the proposed constitution being a foundation stone of nation-building by saying:

True nation-building --- especially in a land with peoples as diverse as ours, cannot be achieved by the central government imposing its will through bureaucratic processes. That would be a mere continuation of the old colonial system, an exchange of masters, in which the gap between “they” the government and ‘we’ the people remained as large and unbridgeable as ever. True nation-building can come only through the active and meaningful of the people in their own development.

In a highly charged atmosphere, the Government then tabled a ‘White Paper’ in which it set out its response in the form of ‘Proposals’ and ‘Explanatory Notes’.

In reaction to the more pragmatic approach taken by the Government, to the access of expatriates to PNG citizenship and to what he saw as the undermining of key aspects of the CPC’s proposals, Momis dubbed the CPC report the ‘Black Paper’, in contrast to the ‘White Paper’!

Certainly the CPC took a strong nationalist approach to many issues but it also envisaged, in general, deep entrenchment of the judicial institutions needed to maintain the rule of law; the establishment of an enforceable leadership code; and the protection of minority and individual rights through a constitutional bill of rights. These were key elements of the CPC’s proposals which were, in fact, for a very liberal democratic constitution.

But whereas the CPC wanted to transform the inherited colonial institutions and overcome what it saw as the disempowerment of the people by the successive colonial regimes, the Government, under considerable pressure from the Australian Government, seemed more intent on achieving independence as soon as possible, proposing to deal with the fundamental issues afterwards.

Ian Downs (1980: 505) quotes with approval Miss Josephine Abaijah, who was not uncritical of the CPC, as saying in the Assembly, in July 1974:

There is a lot of empty talk about doing things the Melanesian way. There is nothing less Melanesian than the present frenzied panic by a few people to obtain an early date for independence before consensus has been reached, before anybody knows what they are doing and before anybody knows what kind of government they are going to have.
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An approach to debating the CPC proposals and the alternatives or proposed modifications put forward by the Government and also by the United Party were agreed on by the leaders of the major party groups, in consultation with the Speaker, Barry Holloway. This was that the Chief Minister would move a motion to the effect that the House adopts, as drafting instructions for the legislative draftsman to draft the constitution for independence, the CPC’s proposals as modified by the Government Proposals subject to any further amendments passed by the House, after debate on the CPC’s proposals, chapter by chapter.

Although the Government had substantial numbers in the House it did not have sufficient to enable it to push its proposals through. This was because of the policy stance of a new parliamentary group, the Nationalist Pressure Group, (NPG) formed by most of the former members of the CPC (and announced by Momis on 27 September 1974), together with the new Country Party led by Sinake Giregire, a former CPC member and an experienced and shrewd politician and businessman. Oscar Tammur and John Kaputin were part of the group.

The aims of the NPG and the Country Party included promoting the recommendations of the CPC in the Assembly. Momis said that ‘NPG members would retain their party affiliations but work and vote together to preserve national resources and oppose alien influence in government and in politics’.

The withdrawal of a number of Coalition party votes on constitutional issues gave the United Party the balance of power although some of its members were members of the NPG or the Country Party. The United Party used this power judiciously to obtain a range of amendments to Government Proposals, particularly where these were similar to the CPC recommendations and drew NPG and Country Party support.

Without the NPG and the Country Party, the United Party would have been powerless to prevent the Government having all its proposals, most of which strengthened the executive in relation to the legislature, provincial governments, constitutional office-holders, individuals and minority groups. The NPG and Country Party and their tenacity in voting together, meant that the Government had to fight hard for most of its controversial proposals. It did not always succeed.

The debates were often passionate and confrontational, especially in relation to citizenship and provincial government. Eventually, in the final sitting of the Assembly for the year, the Assembly passed a resolution setting the drafting instructions arising from the final chapter of the CPC’ report.

The media, notably the Post Courier, NBC Radio and the Pidgin language newspaper, covered the debates in great detail, and in a generally balanced way, as they had publicised constitutional issues throughout the life of the CPC. This gave many Papua New Guineans the opportunity to hear and respond to the clash of ideas, on fundamental issues, played out by the politicians, and helped give people not only an awareness of those issues but also a sense that they were involved in the final stages of making the Constitution. It is arguable that this media coverage contributed to Papua New Guineans’ subsequent sense of ownership of their Constitution.

The controversies over the drafts of the Constitution

I believe that this part of the history of the making of the constitution has not been adequately discussed. There was some debate at the 1996 conference,’Twenty Years of the Papua New Guinea Constitution’ (Regan, Jessup and Kwa 2001: 343-365). Joe Lynch the Special Constitutional Draftsman has written about the drafting process (Lynch, 1980). However, this is my first opportunity to express my views.

When I first saw the second draft of the Constitution in February 1975 (the first was not released by the Government) I was stunned. There were many departures from the drafting instructions, ranging from the country’s name being changed from ‘The Independent State of Papua New Guinea’ to ‘The Republic of Papua New Guinea’ to substantial weakening of the basic rights (though the property rights of non-citizens were enhanced) and strengthening the
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Executive’s emergency powers, including a substantial reduction of its accountability to Parliament.

Other departures were that procedures for amending crucially important constitutional provisions were substantially weaker than had been resolved by the Assembly, and whereas the Assembly instructions had provided that the public solicitor was to be independent of the executive, the draft gave a power to the executive to give a direction to him. The drafting instructions said that the head of state, for which the Government had obtained parliamentary support, was to act strictly in accordance with advice by the executive, yet provision was made in the second draft for situations where the head of state used his own discretion.

It appears that these departures occurred after the Chief Minister, on behalf of the Government, gave the constitutional draftsman considerable latitude in the way he interpreted the instructions. (See Somare ‘Sana’ 1975.) However, Lynch (1980), says that the Political Development Division had oversight of the drafting, while Tos Barnett says that a committee of PNG lawyers provided this oversight (Ballard 1981)).

In a letter to the Chief Minister, after a discussion with him at the House of Assembly, Momis stated his understanding that the Government had authorised the draftsman to ‘to make substantive departures from the House of Assembly instructions, the only proviso being that he would give reasons for these which could be put before the House!’ (Momis: 1975). The Government’s authorisation to the draftsman clearly undermined the authority of the Assembly’s instructions. And in few instances were reasons for departures from the instructions provided to the opposition leaders.

The opposition party and group leaders Momis, Giregire and Abal were extremely concerned about these departures from the explicit instructions of the Assembly members, which had been formulated in resolutions of the Assembly after months of sometimes bitter debate. Each wrote to the Chief Minister in late February or early March 1975 expressing grave concern and setting out, in detail, examples of provisions they identified as major departures. They also sought a delay in the commencement of the meeting of the Constituent Assembly and of the circulation of a third draft of the Constitution, pending discussions involving the Government and its advisers, and representatives of the NPG and the United Party. (ibid, Abal and Giregire 1975)

The Government, faced with such strong opposition to the draft Constitution and its timetable for the Constituent Assembly, and with promised organic laws incomplete, agreed to hold a meeting of all party representatives, as sought by the respective non-government party and group leaders. This meeting was held at the government offices in Waigani on 14 March 1975.

The meeting was chaired by the Chief Minister and was attended by 13 political leaders and advisers. They included John Momis, Paul Langro, Deputy Leader of the United Party and former CPC member, together with two other United Party MHAs, John Kaputin and Mackenzie Daugi (NPG) and advisers to the Chief Minister, the United Party and the NPG (myself).

The Chief Minister's advisers included Mr Rabbie Namaliu and Ilinome Tarua, then head of the Political Development Unit of the Chief Minister’s Department. Mrs Nahau Rooney, adviser to the Chief Minister, and Mr Wally Lussick adviser to the United Party were also participants.

The Chief Minister and his advisers acknowledged that the Draft Constitution should follow the drafting instructions set by the House of Assembly, so there was no issue between the parties on this basic matter. Arrangements were agreed for the Inter-Party Committee to commence work on 17 March to agree on changes to the Draft. (A Third Draft, similar to the Second, was now available and was to be the document to be discussed).

The Chief Minister suggested that an independence date could be set by the House of Assembly as soon as the Constituent Assembly had adopted the Constitution. He also agreed to establish a Follow-up committee on provincial
government legislation, in due course. Arrangements were agreed for the United Party to have the services of Peter Bayne, to return from Australia to assist the Party in relation to the constitutional programme. (Ley: 1975)

The Committee met intensively over subsequent weeks with leaders involved in major issues and a smaller group of lawyers representing the groups, dealing with legal and drafting issues. (Bernard Narokobi from the Law Reform Commission, and I worked together as representatives of the NPG and Country Party). Both the Committee and the Group worked intensively but very cooperatively and in most cases consensus was reached on the changes to be made to the Third Draft.

I believe the Papua New Guinean advisers to the Chief Minister, who included Buri Kidu, Ilinome Tarua, Moi Avei, Rabbie Namaliu, Meg Taylor, Paul Bengo and Nahau Rooney, among others, played a key role in persuading the Government not only that the drafting instructions set by the House of Assembly should be followed, because the House had set them, but that it was in the interests of the country to do so because of the merit of the changes proposed by the NPG/Country Party and the United Party.

The actions of these advisers have had inadequate recognition, but I wish to strongly acknowledge them now. The Government was extremely anxious to finalise the constitutional debates so as to move to independence, but also appeared to want its version of the draft constitution to be maintained as far as possible. Had the advisers not done a professional and committed job, in very difficult and stressful circumstances, the outcome could have been quite adverse for relations between the parties and in terms of the provisions of the Constitution and its impact on Papua New Guineans.

The Fourth Draft of the Constitution was dated 17 May 1975. It purported to reflect the decisions of the Inter-Party Committees, but contained major new departures from the drafting instructions of the House. The most extreme were the change of the basic requirement for most changes to the Constitution from a two thirds majority of the Parliament to an absolute majority and the substitution of the Queen of England for a Papua New Guinean head of state - a dramatic move away from the thrust of the Constitution which focussed on self reliance and the removal of colonial institutions. There were other important departures as well.

These changes should have been put forward by the Government in the Constituent Assembly as proposed amendments to the Draft Constitution, not simply incorporated in it contrary to the Assembly’s drafting instructions and without the agreement of the non-government parties.

Again representatives of the NPG and Country Party (this time Mackenzie Daugi and Sinake Giregire), wrote to the Chief Minister expressing grave concern. They called for, among other things, an adjournment of the Constituent Assembly until a re-established Inter-Party Committee could identify all the new departures and have them changed. The letter called for a fifth draft to enable the Constituent Assembly to deal efficiently with the proposed Constitution.

These concerns soon became public and the Government eventually agreed to change the general provision for amendments to the Constitution to a two thirds majority. However, it was not willing to agree to any other requests, partly because the United Party did not press for them.

When UPNG students heard of the proposal to have the Queen as head of state a number demonstrated and protested strongly.

In debate in the Constituent Assembly on 28 May the Government lost four separate votes on procedural issues and the Chief Minister became very angry and said he was ‘sick and tired of the way things were going’. He made unfavourable comments about the NPG and Momis and Kaputin and about me as legal adviser. Momis asked him to withdraw his remarks, which he later did, and the next day John Kaputin defended my actions as being entirely professional and
Hindsight draft record, 4 April 2003 suggested I was being made a scapegoat by the government (*Post Courier*, 29 May 1975).

Soon after the announcement that Bougainville intended to secede on 1 September the Government suddenly moved, late one afternoon in the Constituent Assembly, to delete the entire chapter of the Draft Constitution that established provincial government. The NPG and Country Party was taken by surprise and Momis was not in the Assembly because he had gone back to Bougainville due to the serious political situation. With few members in the House and Government members primed to provide the numbers, the motion to delete the provisions was passed. Kaputin walked out in protest!

The government was able to have the Queen as head of state provisions passed with the support of the United Party, arguing that this was a short term measure to reassure Papua New Guineans in the early days of independence. It was said that the position would be reviewed in several years time by the General Constitutional Commission to be set up under the Constitution to review it. (That Commission did review the head of state position and recommended that the Queen be replaced by an indigenous head of state, but its recommendation was not acted upon).

The controversies that surrounded the Government’s approach to drafting the Constitution appeared to have affected the attitude of Bougainville leaders to remaining part of PNG. Certainly the leaders of Bougainville referred, in their statement announcing the secession, to the Government’s ‘tampering with the constitution’ as one of Bougainville’s two main reasons for seceding.

Certainly these events undermined John Momis’s position with his fellow Bougainvilleans as he had been trying to reassure them that the Constitution would provide them with a substantial measure of autonomy, protected by the Constitution, and that their rights as a minority would be constitutionally protected. Throughout the three years that I had worked closely with him John Momis had consistently acted as a Papua New Guinean nationalist.

The fact that he went to the UN later in the year to argue Bougainville’s case for recognition as a separate state was very much out character and does not alter my view. I believe that at that time he was in an extremely difficult position as Regional Member and representative of the whole of Bougainville. His involvement as a leader ever since 1976 demonstrates clearly his commitment to Papua New Guinea.

**What did the CPC achieve?**

I do not suggest that the CPC got everything right - indeed there were some misjudgments. These included recommendations such as the move to first past the post voting; the very short period (6 months) of protection of an elected government after its formation, from motions of no-confidence; and the maximum of 10 years for appointments to the judiciary, all incorporated in the Constitution. However, I believe the process of developing the constitution was an extraordinarily comprehensive and effective consultative process and that the great majority of the CPC’s recommendations were sound in principle, appropriate and far-sighted.

The recommendations for broadly appealing national goals and directive principles; a strong and effective parliament and an independent judicial system were largely adopted and have had generally beneficial effects. The proposals concerning the executive power that left no room for the broad discretion (on the basis of monarchical reserve powers) claimed by Australia’s Governor General to dismiss the Whitlam Government in 1975, were soundly based. They were adopted in principle in the strict constraints placed on the Governor General’s powers.

And the well developed proposal for the gradual establishment of provincial government throughout the country (when sought by each province) which was eventually adopted, though drastically altered later, was well conceived and vital if Bougainville was to be part of the nation.
I believe that the strong anti-corruption leadership code, ombudsman commission and leadership tribunal to enforce the code advocated by the CPC; the comprehensive human rights provisions and constraints on the use of emergency powers it recommended were powerful concepts which, to the extent that they were implemented, have stood the test of time. The proposed separation of management and personnel functions in relation to the management of the public service, and civilian control and limitations on the use of the armed forces to provide aid to the civil power, were all sound recommendations, a number of which were incorporated in the Constitution, albeit in modified form in some instances.

The strong entrenchment provisions, while providing for easier amendment than does the Australian Constitution, have had the effect of requiring broad support in the Parliament for amendments to be made. These entrenchment provisions survived strong attempts, under the authority of the PNG Government, to weaken them during the drafting process. Had that pressure not been resisted the Constitution would have lacked much credibility, and almost certainly been substantially changed after 1975 to favour the executive government over parliament, the judiciary, other independent institutions and individual citizens.

The work of the CPC and the PNG Government’s reaction to it were helped by the Australian Government’s willingness, in the main, to stand back from the substantive issues. However, the CPC’s task was made considerably more difficult by constant pressure from the Australian Prime Minister and the Minister for External Territories for the PNG Government to agree to early self government and independence dates.

This pressure was applied without apparent recognition of the reality that PNG needed a constitutional settlement that would be long-lasting and accommodate the needs and aspirations of all Papua New Guineans - in Papua, the Highlands and coastal areas, and in the Islands, including Bougainville which was clearly ambivalent in 1973-75.

I believe Australia’s undue influence from early 1973 for the PNG leaders to accept nationhood as soon as possible, after years of unduly slow development in all spheres, was unreasonable and unfair. The rush to self-government and independence made it very difficult for the leaders and the people to give adequate consideration to the huge changes, in every aspect of political, economic and social activity that took place between 1972 and 1975.

Responsibility for this situation does not lie only with the Labor Government that held office from 1972 to 1975, which itself was endeavouring to achieve wide ranging domestic reforms. The previous Coalition Government had failed to promote educational, administrative, technical, political and economic development during the 1950s and 60s. Thus the 1970s became a period of very rapid change when there were too few Papua New Guineans with sufficient knowledge, skills and experience to equip them for the roles they were expected to take.

That Papua New Guinean leaders and the people handled the immediate post independence challenges as well as they did was a tribute to their resourcefulness and to the effectiveness of the support given by Australia and individual Australians. In PNG’s straitened circumstances one can only hope for a fresh, constructive approach by the new Government, Australia and international agencies and governments to enable PNG to take its rightful place in the community of nations and enable the well-being of its citizens to be substantially enhanced, as the CPC envisaged.

Chris ASHTON

I was a freelance foreign correspondent in PNG from 1970-75, although my exposure to PNG goes back to 1960, and I’ve been thinking about it ever since. I wanted to shift the discussion away from the transition from colonial status – whatever form – into nationhood in the 1970s, to the broader picture of what has happened there is a product of the steep, precipitous haste with which Australia devolved (he must mean ‘divested’) itself of its only major colonial territory, or whether it reflects something which happened, starting in the 19C and finishing largely in the latter half of
Hindsight draft record, 4 April 2003

the 20th century. I am talking about European colonization, access to resources, the strategic interests, missionary, imperial power amongst pre-literate, subsistence agricultural peoples; the evolution of this process from colonial rule towards the idea of self-determination, and after World War II an increasing loss of both capacity and will, and exhaustion, by the European powers to hold these territories; and the swift transition and movement towards sovereignty, encouraged and pressed by the UN, by some of the earlier third world nation states, and very much to its own advantage by the two greatest imperial powers of the world ruling over ethnic minorities. I refer to China and the Soviet Union. If we look at the difference – the British, American, Portuguese, Spanish, Australian colonial territories during this time of this great ideological fashion, and the hope and expectation of a whole vast liberal democracies with free economies would prosper and flourish, with the devolution of colonial power into nationhood.

PNG is one of the latter of this group of developing countries, colonial territories, moving towards this. It is very much part of a wider pattern. All of us here were involved with PNG at some stage, from the late 1960s to the early 1970s. We are here bearing witness to our memories of that period. I think we are all shocked and dismayed at how it looks 27 years on. This has not been part of? central to this symposium, but we are now looking back, and certainly in my mind, I’m thinking is PNG just a symptom of this whole evolution from European colonial power through the 19C running out of steam, running out of will, challenged from within that it is ideologically repressive and exploitative and immoral to have subject peoples, to the hope and expectation of creating these classless nation states, and watching them disintegrate? In PNG, we see this most acutely in the recent general election: the symptoms of a society which holds together, but where increasingly the social, the economic fabric is unraveling. This is in a form of.

That’s one point of view. I am also interested in to what extent Australia itself might have contributed to the parlous state in which PNG finds itself today by the way in which it got out. I think that Australia did a very good job with its own very modest financial and human resources in building the infrastructure of a country. I’m talking about roads, bridges, airstrips, patrol posts, kiap administration, extension services, medical, schools, and particularly I very much credit the Labor government of the early post-war years for getting this going. We were very late starters in this. Australia itself was a tiny country of 4-5-6 million people between the wars, depression lasting most of the 30s. So it was a late starter, but I think it achieved an enormous amount in that way. I think that it did very much less well in the process of decolonisation, the process of the transition into Independence. I’ve no doubt at all that the people who were there – and certainly the people I met in regard to working as a journalist – were idealistic, they were driven, they had huge expectations and hopes, and a belief that PNG was going to do all those things that I described before, as ending colonial rule which was morally unacceptable, and then to usher in an era of great justice and equity and be more reflective of traditional Melanesian values and that these would be fused with the institutions of Western parliamentary democracy. I think this was an incredibly optimistic – we can see this in hindsight – view that these public institutions, the judiciary, the police force, the public service, all imported wholesale from Australia (incidentally, the French and the British did very much the same in their own colonies), would take root in such a short time. We have been hearing about the speed with which powers were transferred, and new bodies were set up in the early 70s in preparation for a nation state.

It is fair to say that there was also a generational shift of Australians who had run, managed Papua and New Guinea since World War II and quite often served in WWII, very much to a generation of their children who were born in WWII or shortly afterwards. Both a class and generational shift, the old bulls being supplanted by the young bulls; people coming in with university education as lawyers. Ted Wolfers mentioned yesterday that there were many lawyers coming in in the early 60s for what was the great adventure. I would like to add to that and I fully endorse what he said, but there were many academics who came in for the great adventure, and indeed there were economists and bureaucrats and so on and who were fired? with the values of Papua New Guineans and who also were supplanting the power of their fathers’ generation and whose own careers lifted off, in many instances, over that five years, as well. Their own
careers were given an enormous lift by the start they had in PNG. They gravitated towards the more radical or politically ambitious and more impatient, the better educated Papua New Guineans of largely the coastal regions. I think they formed a nexus, and to some extent, ignored or regarded with contempt the fears and anxieties of the highlanders, whom they regarded as being manipulated by expatriate business interests; of what would happen in the highlands if the rule of law and other public institutions were not given more time to take root.

Gough Whitlam made it very clear yesterday that as far as he and his party were concerned, it was not for Papua New Guineans to determine when they should have nationhood, it was simply a matter for Australia. Australian self interest dictated, because of the pressure on us from the UN, because there was a growing unrest in the Gazelle Peninsula and Bougainville, and the spectre of France and Algeria, because of the new generation of white advisers and academics and bureaucrats who were coming in and aligning themselves – indeed, Sir Robert Menzies had said earlier the same thing – that we cannot stay there and become involved in a conflict with the Papua New Guinean people – all these were pressures which drove – and Gorton was part of this as well – drove the idea that it was better to get out now. Advance them politically, never mind too much about all the extension thing, all the other services and so on, we will support them. We will throw money at PNG, and all will be well in the end.

I think this was a short term and pragmatic view of how Australia’s interests could be best served, and with the hope that PNG’s interests would be served by this also. Sir Alkan and other senior public servants of that generation have said to me many times that it happened too quickly. I think that it has been costly to Australia in the long run, the speed and the manner of our departure. I cannot suggest that we should have stayed there for another ten or fifteen years, but I think that Australia is paying dearly the consequences of its precipitous departure. I think that PNG is paying far more dearly than we are.

Jill NASH

As an anthropologist, I was in this village although I did go to Port Moresby for approximately less than a year altogether. I was there in the years 69 through early 74. Regarding national unity, I think the feeling on Bougainville among the ordinary people was that this was a kind of a smoke screen. There was no higher principle involved. This was a way of ? in the country of the mine which was expected to make enormous amounts of money. So I think there was a certain amount of cynicism, perhaps, about the idea that we all have to stick together because all of a sudden we are all Papua New Guineans. It has been well documented that Bougainville was rather neglected by the mainland. For many years, the Catholic church provided most of the services in education and health and so on that the government had done elsewhere in the country.

The other point I wanted to make, a sort of a funny one, about the flag, because it has been mentioned a couple of times about how this is a symbol of unity. In Bougainville, you know the flag is diagonal with the red on the top and the black on the bottom, they said, see, it’s the redskins who are going to be on top of us. That’s what they were saying. And they said, the second thing is we don’t have any birds of paradise on our island. That just means big New Guinea, as far as we’re concerned. People were joking about how they should have put a pig on it, which was actually something that we all had in common.

I must say that these matters are not simple to understand and there are many different points of view that came up, that become emphasized or become convenient for strategic reasons which disappear. We’re talking about the connection of Bougainville to the rest of the country. We’re still dealing with the consequences of just not getting this properly sorted out.

Hal COLEBATCH
Just a point following up on Ted Wolfers. There is this tendency to go backward mapping, to start with something which we think is going to happen and then track backwards. I think it was certainly the assumption through the 1960s that PNG would become a country, because we saw it normal and natural that we put a nation around an identity. As John Ley pointed out, if we looked at what Australia was a hundred years earlier, then we would not have been quite so confident about making that assumption. I think we also share the assumption that colonial rule would get an identity. This is what had happened everywhere else, that people grew together in organizing against the colonial regime. We were not looking enough at what people were using the idea of identity to mean, in ordinary political discourse. For the United Party, the unity was about the unity of the settlers and and Papua New Guineans. In fact, I remember in 1968 seeing a flag which had been devised for the precursor of the United Party. A man called Peter Maxwell Graham who was a settler at Banz had had this with a green background with a chain with black and white links. And that was the highlands settlers’ idea of what unity was. But there were all sorts of alternative on what ‘us’ was, and that’s what we were seeing through the 60s, who was ‘us’. I think as Hank said, it was not necessarily the case that these political dispositions fitted into some sort of national map. While it was expressed as national unity or separatist, it was not that these people were trying to draw different sorts of national boundaries around their political thoughts.

We were trapped in this sense of the inevitability of nationalism. If we look at history since then, Whitlam saying, of course, that East Timor could not be viable, and now it has been said that it will be viable. If you look at Scotland, not viable as a separate country, and now ? Constitution that emerging, so that it is important that we keep away from this sense of inevitability to look at what people are doing ?.

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National Unity: Napidakoe Navitu, the Mataungans and Papua Besena - how was national unity helped or hindered by Australian policy and the House of Assembly, including Select Committees, LGCs and economic developments.

TARUA

Regarding what is a home-grown Constitution, I feel that Ted has covered the national end of the topic, so perhaps I should focus on local and district government. I would like to make some personal observations and reflections on the existence and operations of local government at ?Rumbe?. I remember in the mid 1960s I was at boarding school on the southern shores of Rumbe in a village called Wavili. In the village at that time, a big building was put up. There were meetings taking place after it was built, and I learned that it was the chambers of the Galeva Local Government Council. When it was first opened, in the first weeks, there were huge crowds of villagers sitting around listening to what was going on inside. Of course, the kiap came around to make sure that things were running smoothly. Then, in about the same period, another big building was put up in a village called Rave which was on the northern shores of Rumbe. It housed the Gavala Local Government Council for that area. When I moved around the villages about this period, in the mid 50s up to the late 50s, before ??, Councillor this, Councillor that, collecting council tax. It was one of the things they had to do, and also the other thing was the Councillor moved around when they have government work day. Normally they were on Fridays and the Councillor went around encouraging people to come out and clean up. I think there were other councils established in that period – the Hanuabada Council and the ?Gazelle? Council, but not the whole area of PNG was covered. My point about this lower government level is that what it did was help the people organise, the people with political decision making, allocating public funds, also working out development projects, although they may have been small, but it was training towards education in political development.

Also in the 60s I noticed when the Milne Bay Area Authority was created, and John Guise, ?, Lepani Watson were very active in its activities around the area. In the late 50s one of the first Papua New Guineans to become a member of the legislative council was ?Murare? Dickson, a Kwato elder and he used to go to Port Moresby for their meetings.
However, when he came back to Kwato, he never talked about what happened in these sessions in Port Moresby. His topics of conversation were about the evangelical work and cricket. My reflection is that his order of conversation may have been the other way around.

In 1961 the first Papua New Guinean woman became a member of the Legislative Council. It was Alice Wedega who also came from Kwato. Now Alice had written a book and in this book she said that she was taken to ASOPA, Sydney, with a group of Legislative Council members, and were trained in parliamentary procedure. Also in her book she said that before the Legislative Council met, they were briefed by John Gunther. At the end of the briefing, Gunther instructed them that when it comes to voting, they had to vote in the Administration. However, Alice said in her book that she would vote on principle or conscience as to what was right. I have been thinking what deal or issues she would vote against. I think Auntie Alice would have voted against the government view Papua New Guineans to take alcohol to drink, ironically, on the basis that it was a missionary at Kwato who had told us that alcohol is evil. Ironically, another missionary did introduce a bill to allow Papua New Guineans to drink, and we all know it was Percy Chatterton, in the mid-1960s.

As I said, my point here is that a political education did prepare the people to come to national level. Of course, the Legislative Council changed in 1964 and we had the House of Assembly.

BAYNE

I want to point out some things, some sources, that I think require close study if one is to understand the way the Constitution was formed.

First of all, let me start with ‘What is a constitution’? A constitution a power map that tells you how power is distributed in a political system. The heart of the power in a political system is the power to make law and the power to enforce it, which has been defined recently as executive powers. Any changes also need to be interpreted from time to time to sanction people going to jail, but their role is perhaps not as material as those who make the laws and those who enforce it. The key to the British system of government is responsible government, as we all know it in the Australian system. I mention all that because that is the key, too, to the Papua New Guinean system of government. There was a certain amount of refinement round the edge. There were Bills of Rights, there was Ombudsman, Leadership Codes, various other statements about executive power to make. But the kernel of it is the system of responsible government. If one thing is fact, that die was cast really when the British colonized Papua in the 1890s because the British had come then and the advisers in London and the advisers in Australia all had within them a corpus of ideas about how a colony should develop, and that was to develop through to a model of responsible government. One can trace that through to the late 60s in PNG when that was very much the commitment to the model of government. I think all of you here have heard about the transfers of powers that took place in that period. If you want to know more, there is the book that Hal Colebatch and I wrote in the 1970s. One of the points that we did make in that book, which drew some criticism, was we felt that the die was cast, that PNG really would not have anything else than a system of responsible government. So if one wants to understand where PNG has got to – why we said that was because we felt the politicians who were learning to work that system would not want to work in any other system. They would rather trust a system which they had benefited from. There is certainly part of PNG’s constitutional history which goes right back into that phase. If you trace the various Papua Acts and New Guinea Acts and Papua New Guinea Acts, you will see this development along this British colonial model, which you can also see in most other British colonies.

Now where the PNG experience differed, of course, from the British experience was that the British had a tendency simply to state a constitution for a colony in the form of a ? council, and then let the people on the ground work out whether they had to adapt it in the years that followed, whereas the model in PNG was very different, it has been
somewhat different in Nauru and somewhat different in Western Samoa. What gave rise to the PNG model was the high involvement of Papua New Guineans in the process of forming the constitution. That’s what I want to say a few words about, mainly to draw attention to the sources. But again, to reach back before the period of 72, because – my first acquaintance with PNG was in 1965 when I went there with Justice Smithers who Geoff Dabb may talk about, or use his name in vain, I suspect. But nevertheless, it was a conference in Port Moresby in 1965, an aftermath of a British law conference in Sydney, and that was probably the first time that there was an articulation in public of ideas of Papua becoming an independent nation, looking forward to ? ? ? change ? serious thinking along those lines at the Australian level.

I remember that conference because there was a name there which was on people’s lips: a Lyall ?Manaramua? who was at that stage a sort of figure who was seen as being the emergent perhaps Papua New Guinean leader. He was perhaps the first of the Papua New Guinean politicians who was ? John Guise who emerged as a figure who people might use as a base for thinking about the ultimate leader.

Let’s now get to the period of the early 1970s. My main point here would be ? really not saying much different ? ? is that by the time the Constituent Assembly ruled off on the Constitution in 1975, the significance of the CPC Report, and indeed in those people who were the driving forces for that committee, had been significantly diminished from what it was back in 1974. A lot of things had happened from the time the CPC Report came out in various stages in 74 and after that a year later. That’s what I want to briefly refer to, indicating the stages rather than people.

First of all, there had been Papua New Guineans involved in debates about the Constitution before the report was handed down. One thing I should say is that one unfortunate incident in the process of 73-74 was the great distraction into looking at citizenship. My recollection of this is that this was really caused by some ill-advised remarks of Al Grassby who was Whitlam’s Minister for Immigration at the time. Grassby indicated that any Australians who took PNG citizenship under the Constitution could get their Australian citizenship back when they wanted it. That is what excited Kaputin, I think, in particular, to be so distracted about worrying about the laws of citizenship, because there was this suggestion coming from the Australian side that a PNG citizenship would really be a hollow thing as far as Australia was concerned – they could always go back to the Australian system when they wanted to. Nevertheless, in the debate that was sparked by that, there were many Papua New Guineans who played a role: Sir John Guise, Julius Chan who saw themselves ? ? debate about citizenship which involved other Papua New Guineans besides the CPC.

Once the CPC Report came out, although the provincial government part of it was delayed right through until the end of 1974, which did create some problems in trying to integrate their thinking into the thinking of the other parties involved in the process, the House of Assembly then set about a period of drafting instructions. That is, the motion that was put to the House of Assembly was that the recommendations of the CPC Report be the drafting instructions, except as modified by resolutions of the House of Assembly. That led to a long series of debates in the House of Assembly over mid to late 74 in which a great many PNGn members of the House of Assembly played a role. The drafting of simply every stage was debated. The CPC people and the Nationalist Pressure Group were enthusiastic at the start but that enthusiasm waned over time, and other MPs came to the fore in the debates over this. So that period of the House of Assembly debates in the last months of 1974 are very important as source material to understand what Papua New Guinean politicians in the House of Assembly thought the Constitution should contain. It was far more than simply rubber-stamping the CPC’s recommendations.

Once that phase finished, it was then expected that the Constitution would be drafted in accordance with the instructions because one could work out what they were by looking at the CPC Report and the House of Assembly resolutions. It was expected that the Constitution would reflect that. It did not, and the first drafts of the Constitution that were seen by those of us who had been involved in advising other groups – my role was particularly as an adviser to ? at this time,
albeit as a Legal Officer in the House of Assembly. There was a great disjunction between what was in the first drafts that the government produced in early 75 and what the drafting instructions were. That then set up a bit of a political furore. The United Party made it very plain to the Government that it was not going to go along with the government position, so the government simply had to start the process almost over again, although this time we had the constitutional drafts as being, in a sense, the counterpoint for discussions. What then happened up until the start of the Constituent Assembly was not only debates in the parliament, but a round of political party meetings. This is again an enormous amount of work. Paper was generated in this process. The members of the various groups, the United Party being one group, the Government being another, and the Nationalist Pressure Group another, had meetings with their advisers, there were papers presented, reports were produced and an enormous amount of discussion went into in this in this phase. By the time the Constituent Assembly began its deliberations, a lot of things had been sorted out between the parties as to where they stood.

Then you had the Constituent Assembly period when there were again many debates so that the Constitution and the draft that was then presented coming out of the government was then debated through the Constituent Assembly. An enormous amount is on the parliamentary record, not just in the debates in the Constituent Assembly but also in the papers that were being tabled at the same time. They were given a lot of information as to what people wanted out of the Constitution and what positions were being taken. Finally then, the Constituent Assembly ruled off:

So what I want of emphasise is the an enormous amount of input from an enormous number of people, most of the Papua New Guinea MHAs in the parliament had a say at one stage or another in the affair. The actual Constitution that finished up was quite significantly different, even in some core respects, from what was in the CPC Report. Provisions such as the role of the judiciary had been worked through in great detail by advisers. There was not much on the parliamentary record about this, but there was nevertheless a lot of (someone else talking here). There was a lot in the debating process about the role of the judiciary and other events as well. There was the event of changing the head of state from ? ? the Queen as monarch. A lot of interesting debates occurred around that. Many of these were outside the official forums I’m talking about.

Now I simply want to say there is a great richness in the history here, which involved a lot of Papua New Guinean politicians. It was very much their own constitution. What struck me after this was that shortly after the Constitution was enacted and PNG was an independent state, things went wrong in some respect and there were suggestions being made that this was the fault of the Constitution. Thomas Gavale – this will be on the record in the Post Courier – who was a member of the Nationalist Pressure Group, and certainly no shrinking violet – said, ‘It’s our problem. We made the Constitution.’ So there was certainly a perception there that they were very much involved. I am seconding what Ted said about how many Papua New Guineans were involved in this process, how that might wash through.

There are two other points I want to make. In watching constitutional developments, it is not just a question of what is in the Constitution, prior to Independence and after Independence. One very important constitutional development that occurred even after 1974 was the re-negotiation of the Bougainville Copper agreement. When I came to PNG in 71-72, it was an article of faith among some Crown Solicitors Office lawyers that you could not change the Bougainville Copper agreement because it simply could not be done by the PNG House of Assembly. That was wrong, as a matter of constitutional law, but it was not until that was forcibly said that that sank through. Then you had the stage of trying to convince people this was something that could be done. Robert/Robin? Brown of the British Commonwealth Secretariat who came out to the Waigani Seminar in 1973 was extremely important figure in that. But that re-negotiation of the Bougainville Copper agreement was a very important development. There is not much on the parliamentary record about it, but one night there was a meeting called of all the politicians in the house, and advisers, and there was a meeting down at the old House of Assembly where the government said – and they had squared this away with Tei Abal
– that we’re going to change this agreement, whether they like it or not. Then when Bougainville Copper saw that that was what was going to happen, that the ? ? would change the law, then they capitulated and the agreement was changed by consensus. But that renegotiation had been an important constitutional development, as well as being a very important one in the country asserting its sovereignty in a meaningful way.

The second thing I would say is to watch out for what happened after Independence. One thing that the PNG Constitution did try to do was to have strong controls to prevent corruption. They borrowed from Zambia. There was an Ombudsman, there was a Leadership Code proposal. But people realized that that really did not have teeth ? Independence. Then in the post-Independence period, there was an attempt to give it teeth in about 77. I was out of the country at this time. Anthony Martin, who was I think an experienced British journalist who I think was working for Julius Chan at the time, had the view that that was sabotaged, including by the Australian government representatives of the time. They were pushing against the documents. They are here: I think they could comment. Why PNG did not adopt, in the period after Independence, stronger controls on Leadership Code is an interesting question. One could arguably say that the failure to adopt that has been a stage in the country’s development.

Now the final point is this – I did not want to mention names – but there is a person here by the name of Tarua. I think if there is a person deserves an accolade for being a hero, it is him. By early 75 the Government support base had collapsed. Toss Barnett was sick, Joe Lynch was a bit ill and pulling out of the fray a bit – he was never really in it, but ? ? possibly as a political adviser. What happened in early 75 was an enormous jump for the government. They had the United Party and the Nationalist Pressure Group saying, don’t count on us to support your Constitution, you have got to negotiate with us. Then that Constitution had to be drafted, it had to be moved through phases in the Constituent Assembly, all kinds of political deals should be struck. My impression of it was that the Government ?effort? that it was largely being run by ?Ley? out of an office in the Chief Minister’s Department. He, like ?, would get up at six in the morning and leave at eleven at night, and it was an enormous effort to carry it right through because it was clear that the date was going to be August some time, and an enormous amount had to be done: papers drafted, papers pushed through committees, things ruled off, debates in parliament arranged, people there to vote, all that sort of thing. One cannot underestimate just how much sheer work was involved. There were many people involved in this and I just want to put on the record that your (Tarua’s) contribution was ? ? big one, from the Government’s point of view.

MORRISON

I now suddenly realize why it took so long for the CPC to produce its draft in court.

As far as the Australian Government was concerned, and its relations with the CPC … The CPC was set up in 1972 before we came into power, so it was a fait accompli. But it was set up by the Somare government. It was obvious from the beginning that they would not have ready, as of 1 December 1973, a Constitution for self-government. I was then invited by Father John Momis to a meeting in May 1973 where, allowing for normal delays, we came up with the two-step self-government program. First was the tabled report in February 1974, and it would go to the House of Assembly in April 74, and that would be adopt the Constitution. Well, it failed to meet those deadlines. One of the reasons it failed was because it became not just a CPC, but a political force, because the major opposition to Michael Somare was the CPC members and other members of the House of Assembly who did not want – or delay – Independence.

We did not move – I kept hands off in any direct relationship – but I did see Father John Momis in early 1975. This was after he came back from the UN (and I agree with the observations my friend Ebia made about his attitude at that stage). I impressed upon him the need to finalise the Constitution in court. I did not care what sort of report it was, I did not care what sort of government it had – whether it was going to be a presidential or a Melanesian, or what – but there was a clear need to meet the sort of deadlines, but the deadlines kept being put back because the CPC did not come up with
the drafts on any of these scheduled times. I was not concerned about the nature of the CPC’s report. I would have hated to have made judgements, for instance — and I kept myself out of this — on the questions of citizenship that came up. There was not going to be a question for the Australian government to decide on the goods or bads of the Constitution, as long as the House of the Assembly decided on that Constitution.

One of the early things that we had to resolve with the PNG government was that the CPC wanted to vet, to go through, the powers that were being transferred. We took the view, and Somare took the view as well, that we were transferring administrative powers. These were the sort of powers that any government, irrespective of whether it was a dictatorship, or whether it was a presidential system, or whether it was a Melanesian system, or whatever, would in fact have to handle. These were the sort of state administrative powers. So we opposed, along with the Somare government, that these should be sent across to the CPC because we saw their job as producing a home-grown constitution. The administrative powers were being transferred, they were the sort of powers that came up at any stage in any government. It was not specific to PNG.

So I think the delays that were caused in the pace of the CPC presenting its report, stemmed not only from the delays in the preparation of the draft, but also in the fact that it came to be used as a political weapon in the PNG politics.

**STONE**

I have put together some notes. It will take more than ten minutes, and I am trying to decide what to drop. I wanted to talk about three or four things, one about the origins of the CPC, second its mode of operation, dealing with some procedural issues of significance, picking out two or three substantive issues which I think are important, and then drawing one or two conclusions.

I wanted to talk a little about the origins because there is a lot of mythology about this. I thought it might be useful to clarify what happened because I was deeply involved in it. As far as I am aware, it is not true, as Downes suggested that the CPC was in fact at Johnson’s suggestion to Somare. I do not know where he got that from. Unfortunately, Les Johnson is not around to check it out. In John Ballard’s book, *Policy Making in a New State* (1981), gets closer to the mark when he references to Richard Davidson and myself. There’s been quite a lot of reference to autochthony by Ilinome Tarua’s paper, by Ted and his verbal presentation, and although Joe Lynch had given thought to this and written about it quite a lot much earlier, he was not in fact involved in this exercise until fairly late in the piece. The autochthonous ideas did stem from Jim Davidson and they related to this sort of historiography that he created towards the South Pacific as Foundation Professor in Pacific History at the ANU. I was one of those who went through a PhD scholarship with him and had a role in bringing the idea and discussing it with Michael Somare and Ebia Olewale and Albert Maori Kiki and one or two others in that period in 1971, and I regard myself as being fortunate in being able to meet and get to know these fellows a little while they were still part of a very tiny minority in the House of Assembly, with hopes, but no assurance whatsoever, that they would be able to form a government a year hence.

After the coalition government was formed in April 1972, Michael Somare advised me to discuss the proposal in greater depth with Tony Voutas and John ? and his staff. I did that and Voutas took carriage of the proposal from that point and from his position on Somare’s staff. The rest is very much on public record. All parties of the House of Assembly were represented after substantial negotiations, as was the extensive terms of references they established. It should be noted that initially it was before internal self-government because that is what it seemed to be all about at that stage. Even the Australian Government did not ? ? independence. We know about the staff. John Ley, as the Legal Officer, came from the House of Assembly and prior to that the Public Solicitor’s Office. ?Saia Avosa? from the Gulf District became Executive Officer. Jim Davidson and I from the ANU, and Ted Wolfers who had a very long association with PNG came up from Macquarie. Subsequently, because we all of course were of the same colour, it became obvious that that
was not good enough, and we were joined by Bernard Narakobi, a Papua New Guinean lawyer. Jim Davidson sadly died in April 1973 and was not replaced.

I want to talk a little about the mode of operation. Again, much is on public record. You will find it in the CPC’s Report, in the second volume as well. It includes a schedule of committee meetings, details of the extensive tour of all sub-districts, I might say. This was a departure, and something that the CPC members themselves wanted, not just to go to the District centres. I should mention in this respect also the associated work of the Political Development Division, and I would endorse Peter Bayne’s comments about the contribution of Ilomin, which went back earlier than the period to which Peter referred. And I might mention here that we have here Jonathan Ritchie of the University of Melbourne is working on a PhD thesis which will cover the consultative program, and he has unearthed some very interesting stuff.

There are half a dozen procedural issues which stand out as significant, it seems to me, thinking back after this long period of time. The significance of their impact. First I would draw attention to the fact that Somare and Guise, who were members of the committees rarely attended. Michael was the ex officio Chairman. He took very little part. He came to one or two meetings. He joined us for the visit to Bougainville. But the pressure of his duties were such, and increased enormously, as a result of the transfer of powers program, and Toss Barnett, in the book edited by John Ballard, that I referred to a moment ago, remarks there about the serious problem of absence of communications which were at least partly, and probably significantly, due to the fact that Somare was unable to take the part that we had envisaged he would.

The second issue was confidentiality. This rule was established from the outset. The members of the committee wanted to feel free from outside pressures, at least until such time as they were ready to release their ideas and proposals. It stemmed from that that they would require that all members and those who were working on the advisory staff should regard all the proceedings of the committee and its decisions as confidential until released. This had some unfortunate consequences. It helped, I think, to create the environment in which suspicion and criticism emerged and flourished; not least considering the supposed role of the CPC’s advisers. I had suffered personally, to a significant degree, as I only found out later, as a result of this protection mechanism for another time. But I believe that the committee members were right in their decision. It would have made things much more difficult, more difficult than they already were, I believe, if the confidentiality rule, which was their decision, could not be enforced.

The attitude towards the discussion papers is another procedural matter of some significance. Jim Davidson in good faith drafted a couple of quite brief outline papers fairly early in the piece, I guess round late 72, one on citizenship and the other one on head of state. Quite contrary to any inference that might be drawn from a quotation which Downes has of something that Jim Davidson said about Samoa, nothing in the citizenship proposals that emerged from the CPC could in any way be attributed to Jim Davidson. His piece in fact was very ?. Similarly, his head of state set out a few options, he again stress the symbolic nature of unity of the state and so forth which heads of state normally were seen to represent. There was considerable objection to the fact that any paper should be produced by the staff ahead of any substantial discussion on the issues. The ? was that the staff were told that they should not write any option papers, or only should write option papers when a sense of the committee’s thinking had become much clearer. That, in fact, was what happened from that point onwards. There was, however, a more drastic and immediate result, because it caused the United Party representatives to walk out of the committee for a week or so. This was partly a reflection of wider dissatisfaction with the government, but it was arranged as a result of this little contretemps for the Leader of the Opposition to be regularly briefed on what was happening within the committee. And so they returned.

Another issue which has not been alluded to so far was our bringing in consultants from many places overseas who had expertise on specific areas, and experience in other parts of the world in these areas, which we thought would be useful
to the committee and would certainly provide them with a background which the more permanent staff would not be able to provide, certainly at the same level. Jash Gai, who came in from Tanzania, has had an abiding relationship with people and subsequent PNG governments, was a real support and gave enormous assistance and continued assistance, including the more recent Bougainville negotiation. But there were others: a man called Watts from Canada who had a lot of experience in the financial aspects of decentralization, the federal system in Canada; ?, a political scientist from Britain who had a lot of experience in Africa. We even managed to get the Chief Justice from Trinidad to talk about judicial systems, and I guess there were others whose names do not immediately come to mind. I just wanted to make the point that they did have access to a wide variety of information and views and advice.

Another, and vital, procedural issue was one of timing. In particular, the pressure to have Self-government by 1 December 1973, a decision originally made in Australia, led to bitter exchanges. And finally a meeting which has been referred to with Bill Morrison and his people, Somare and his, and Momis and his people. We did not seem to be getting anywhere, and I think it was I who suggested that instead of fighting about December, why don’t we agree that December should be the time of Self-government, for the handing over of powers formalized, that we would celebrate later in April. And that was in the end accepted as a kind of compromise. However, we were not able, as Bill Morrison has pointed out, to meet that next deadline. Interestingly, we were only four months out; and when you consider the overall timing of things, four months does not seem a hell of a lot of time. And in the context of the timetable which the Australian Government was setting, of course it was vital, and no doubt the reason why Bill Morrison gets so agitated on the issue. Of course, it was not helped by the fact that in April of that year, Ted Wolfers and I had our services terminated. One can speculate about why that was, whether it was thought that the CPC would ever produce a report. Certainly there was speculation that it would not. But it placed enormous pressure on John here on my right, and on Bernard Narakobi, with him. I don’t know if it was expected by those who made the decision, but Ted and I did produce the drafts for the report that fell within our responsibilities, from Sydney and Wellington, and forwarded them back to Port Moresby.

We had trouble over drafting instructions at one stage. It was suggested, to save time, that we would pass proposals from the committee to Joe Lynch who, at that point, had been appointed to draft the constitution itself. I won’t go on about this, other than to say that it did not work because Joe, in picking it, he just for an awful long time and had his own ideas about how things should go, and we found ourselves flooded with dozens and dozens of questions about everything from the Foreword and the end. The process was called off as it was holding up our major work, which was to go on to being able to prepare the report.

A paper which I found on the table today has dismissive, almost derisory references to the CPC with regard to the time taken ‘should be seen as a reflection of an Australian Government that care little whether PNG had an effective or indeed any constitution prior to Independence’. I think his presentation a short while ago tends to back that up. I won’t say anything more about that.

Before leaving this issue, I would like to pay tribute to John Momis because he has taken so much flak from so many people over a period of time, which indicates that he was not well understood nor had his contribution been adequately acknowledged. I think PNG owe him a great deal and that future generations of Papua New Guineans will in fact come to recognize that to a greater extent than perhaps has happened in the past.

I want to refer to three substantial issues: citizenship, provincial government and head of state. In regard to citizenship and provincial government, I would make this observation: that both were regarded in their course as radical and contentious, but the shape of both clearly reflected the position taken by members of the CPC after extensive debate. There was no way whatsoever that those who were on the advisory staff, even if they wished, could intervene on these matters. Citizenship – we’ve had a suggestion today as to what might have prompted it, from Peter Bayne. That may
have been in their minds, but they kept on coming back to citizenship. They would discuss it, then drop it, then come back to it some months later, and that process went on for quite some time. I think what they came up with in the end reflected more cohesiveness, which others have referred to, and a growing nationalism. That was part of their process. As far as provincial government was concerned, it was reaction, I believe, to the strong centralization of powers in Port Moresby, as well as a strong desire to retain, within PNG, areas that might otherwise wish to break away.

An issue that might be of particular interest to, and illustrating the independent position and thinking of the CPC, was the proposal that there be no head of state. I now bring things to your attention which you may not have heard about before. This arose from members saying to us, but do we need a head of state, and if so, why? Well, it was not, I have to concede, a question to which we had given a lot of thought previously. There is a very careful, I believe, explanation of the CPC’s rationale in its report, as to why they believed it was not necessary or appropriate to have a separate head of state. And those reasons are also set out in the book Twenty Years of the PNG Constitution, published in 2000. I had a personal role in this, in the context of scratching our heads as to how we were going to deal with it. I was scheduled to make a visit to Canberra – I think from memory that it was as a member of the committee of the New Guinea Research Unit, which was how I came to be up there in the first place, as a research fellow. I took the opportunity to visit Professor Jeffrey Sawer who, I had been advised (not being Australian myself), was possibly the leading authority on constitutional law in Australia. He was polite. He received me and gave me time, which perhaps I had no reason to expect. I put the question to him, and a very interesting conversation resulted. I should tell you that, in short, he said that it was not absolutely essential to have a head of state. Two things that he mentioned in that discussion was firstly, it was from Jeff Sawer that I received and I reported back to the committee the idea of a constructive vote of no confidence. For those who may not be familiar with the term or its application, a vote of no confidence in the government or the Prime Minister in the House of Assembly would be acceptable only if it named a successor. It comes, I understand, from a German precedent. It does mean, of course, that you therefore would never be without a Prime Minister, thus obviating the necessity for a head of state to be involved in the process.

The other important aspect was that there are certain functions which are traditionally carried out by a head of state. I am not really referring to prerogative here. Appointments and the like. These, as Sawer suggested, could be distributed usefully. That was, in the end, what was proposed, with the Speaker being the recipient of some of the major aspects of those functions.

We know – but we don’t know enough – that the no-head of state option was not acceptable. There were even debates subsequently as to what sort of head of state there should be. There were some rather interesting changes at the end of that decision. But what is important, and what is owed to the CPC, is that there is no prerogative anywhere in the Constitution that the head of state can only act on ? advice. If Gough Whitlam was here today, I would have perhaps said to him that if this had been the situation in Australia, he would never have been sacked.

In conclusion, I would say that John, in his paper discussing the crucial and in many ways traumatic later developments in the CPC and the events that followed, he and I carry that burden. But could I say this that the CPC ensured, I believe, to the extent that it was able, that the Constitution was homegrown; second, that it greatly enhanced the public perception and understanding of the move to self-government and eventually Independence, and in many instances, allayed fears that were there. It was for me personally an extremely exciting time, an unforgettable experience, and I’ll always regard it as a great privilege. It was the second time that I had been present in a country for the move to self-government and independence. The other one was a sharp contrast, the Cook Islands ? in subtle ways, but many of the principles were the same. I regard it as a great privilege and one I shall always treasure.

OLEWALE
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There is a village not far from Thursday Island, Daru. Our parents told us there is a government man coming, so we all ran on to the beach. We were looking out. And all of our village – we had village councillors. Now in Papua there was a village constable. Lieutenant Murray gave them big medals and they would wear them when government officers came. Village councilors with their black uniform with ‘Councillor’ written on them. So the boat paddled these two Australian officers on shore. We watched, they moved very very carefully. Next we saw these village councillors with their arms crossed like this, wading into the sea, and the Australian officers sat on them. They took them on shore. They were all dressed up, with white uniform, with all the socks and shoes, on to the shore. I was a little boy then. I started thinking, why can’t these persons touch the salt water? Maybe the people with white skin are allergic to salt water. That was my first interaction of Papuan officers who were coming to our villages, to patrol it. Thank you very much.

Head of state. The question was brought to Cabinet, and we decided that we would recognize the Queen as head of state because Papua was formerly British New Guinea and we still had that tie with the Queen.

LEY

In relation to Peter’s comment about the Constitution being a power map, and the main elements being the executive and the legislature, I believe the judiciary has and equal role in the three elements of government. The Constitution is the fundamental law of a country. It establishes the rule of law, and without the rule of law applying, one does not have a viable liberal democratic state. I believe that the Constitution itself, and the independent judiciary, the independent office holders: the public solicitors, public prosecutor and so on, they were crucial elements in the overall package. In terms of substance, there was little or no debate over that in the debate on the CPC’s report. The government accepted the CPC’s proposals on that front, and I think that is important to consider.

Second, I wanted to mention, in relation to citizenship, Peter says he thought too much time was spent on that, but citizenship is really about the identity of the people who make up the country. It was an absolutely crucial issue for all Papua New Guineans and people who were not Papua New Guineans who had lived in the country for a long time, people like Tom Leahy, who wanted to know where they stood. I just wanted to say – and certainly the committee felt, and I agree – that this was a very central issue and inevitably was going to cause a lot of controversy, particularly if the status quo was going to be changed. There is some discussion about that in Downe’s book. My perception that Grassby’s comments certainly were unhelpful, but they were at the margin of the way the CPC looked at the matter, and in relation to the general debates as well.

As to the Bougainville Copper agreement renegotiation that Peter mentioned, that was extremely important in the context of PNG politics, particularly for Bougainville, and John Momis and John Kaputin were at the forefront for pressing for that renegotiation to occur. John Momis was consulted by the government group who were doing the renegotiation to make that happen. It was a very important issue for Bougainville’s perception about the country and the intention of the renegotiation to give moneys to the provincial government and more royalties to the landowners was intended to right a very serious wrong that had been done when the original agreement was made.

As to the debates which I have gone into in some detail in my paper about the drafting of the Constitution. I felt, and I agree entirely with Peter about the debates on the CPC’s report. It gave a chance to all the Papua New Guinean parliamentarians, and non Papua New Guineans for that matter, to express their views on all of the issues. Each chapter of the CPC’s report and recommendations was gone through and dealt with very fully and well. I emphasise in my paper that the drafting instructions were very clear to the parliamentary draftsmen. There was a recommendation by the committee that there be a select committee to oversight the drafting, so that there would not be problems of argument about whether the instructions were being followed or not. The government rejected that recommendation and said that the government would look after the drafting. There are three different accounts and Jimmy Tarua may be able to
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enlighten us about what he saw as the position. Michael Somare, in his autobiography Sana, says that the government
gave the legislative draftsman instructions to draft the Constitution using the resolutions of the House as if they were the
sort of drafting instructions that he would get to do ordinary legislation. In the past Joe Lynch had a very strong role in
relation to the development of policies as well as drafting legislation. According to Somare, in Sana, he says that the
only caveat was that the draftsman should give any reasons for departure, which reasons could then be given to the
Assembly. In Toss Barnett’s account of what happened in John Ballard’s book of 1981, he says that there was a panel of
Papua New Guineans lawyers whose responsibility was to oversight the drafting. Joe Lynch, in his account of his
drafting of the Constitution, published in 1980, I think, in a journal, he says that he was working to the Political
Development Division. Now I don’t know which of those accounts is the precise story, and I am hoping that, out of
raising this today, we will find out a bit more about it.

The final thing is that I want to disagree with Peter about what happened in the inter-party group meetings and so on.
Certainly the United Party leadership and the Nationalist Pressure Group and Country Party (which was the other group
which was trying to get the CPC’s recommendations adopted and carried through), they protested to the Government
over the drafts. This happened more than once. There were second and third drafts initially, and then after all of the
meetings and all of the things had apparently been sorted out, there were big problems with the fourth draft. At the very
first meeting that was held as a result of the protests from Tei Abal as leader of the United Party, and Momis as leader
of the Nationalist Pressure Group, Somare called together, set up this drafting committee and set out details of who was
there and anticipated, but at that first meeting he said that the Government accepted that the drafting instructions that
were set of the House of Assembly should be followed, we accept that as a matter of making those, implementing those
in the draft. That was the basis on which the discussions by the party groups took place, to implement what was in the
drafting instructions set by the House.

There are other issues that came out. I mention in the paper that the change from the indigenous head of state which was
what had been adopted by the House of Assembly suddenly to the Queen becoming the head of state. That was inserted
in the fourth draft of the Constitution without agreement, certainly by the leadership of the Nationalist Pressure Group
and the Country Party. I can’t say about the United Party. That should have been brought forward as an amendment by
the Government in the Constituent Assembly.

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* Administration of Justice:

The Appropriateness of Papua New Guinea’s Justice System

Geoff Dabb (prepared paper)

This note is directed to the suggestion, an accusation really, that Australia left Papua New Guinea with an inappropriate
and in some respects unworkable justice system.

One way to measure how well they [Australians leaving in 1975] did is to look at the state left for Papua New
Guineans. Looking at law and order in Papua New Guinea today implicitly involves making judgments on
what Australians did over nearly a century of an expanding administrative frontier. (Dinnen 2001)

Lack of planning and neglect produced a colonial court structure alien to the people for whose benefit it was
purportedly introduced. There is ample evidence that the colonial courts served not the people of PNG but the
colonial ruler and colonizers. (Chalmers 1982)

A specific charge is that Australia failed to establish a system of community courts that would have reinforced
important traditional social controls. Sometimes the suggestion is that the colonisers were unaware of or failed to recognise the merit of such controls.

A comment of Justice Gore (PNG career 1924-1962) has been cited as an example of that insensitivity: ‘There were no fundamental rules of conduct upon which to build a criminal system, so there was no alternative but to apply the criminal system of the white settlers…’ (Gore 1965). Ted Wolfers chided the (apparently then many) persons entertaining that ‘type of thinking’ that it did ‘a gross injustice to the complexity and consistency of native custom’ (Wolfers 1966).

Such chiders, particularly since independence, have been fairly common. While not entirely in agreement as to the ‘consistency’ of native custom, many seem to think that the colonisers committed a major blunder in placing undue reliance on a ‘western’ system of justice.

Perhaps the most pointed charge along those lines is in the Clifford Report on the post-independence law and order problem.

Reference has already been made to the disastrous Derham Report of 1959 – and to the Hasluck “restatement” of his policy in September 1962 which sought to over-ride custom or to fade it out gradually or to act as if it did not exist. It is significant that a noticeable deterioration in law and order occurred about this time. (Clifford 1984)

To be fair, Clifford also mentioned as significant that the liquor laws were changed at that time. An arguably unrelated development is that this writer began his service in PNG at that time.

I intend to talk mainly about the 1960s, when independence seemed sufficiently imminent, maybe 5, maybe 20 years away, to call for some urgency in institutional preparations, while still leaving time for them. (In 1963, self-government was predicted by the Law Council of Australia for ‘about 1975’. (Kerr 1968))

Some background

I arrived in Port Moresby in August 1962, a young lawyer (nearly 24) with 18 months fairly intensive experience in a Melbourne criminal law practice. I wanted trial work both as a matter of speciality preference and to see the country by going on court circuits. Unlike most older lawyers at the time, I didn’t care how long I would be out of town. I expected to stay 2 years, maybe a bit longer. I finally left PNG service at the end of 1979, and have since returned there briefly 5 or 6 times on various items of Commonwealth business.

When I arrived there in 1962, legal resources were rather thinly spread.

The PNG legal establishment consisted entirely of white lawyers: 4 Supreme Court judges and a registrar, all based in Port Moresby; 6 magistrates distributed across regional centres; about 15, maybe 18 max, lawyers in a Department of Law, and a further 6 in a public solicitor’s office; some 8 private law firms, mainly in Port Moresby and Rabaul, each with 1 or 2 lawyers.

All those categories increased in their constituent numbers over the following years, and the establishment of the university law school added, initially, another 5 professional lawyers.

The population figure was 2m plus, and also rose progressively. Most of the lower court work (80% has been suggested) was done by field staff magistrates at 2 levels: lowest courts with jurisdiction only over ‘natives’, later replaced by local courts without that limitation, and district courts corresponding to magistrates courts in Australia.

The bulk of the Supreme Court’s work was criminal trials, mainly done on circuit, with the judge exercising also the
functions of a jury. Circuit parties consisted of a judge, associate, prosecutor and defence lawyer. Court policy was to sit at the sub-district centre responsible for the listing of the case, but for various reasons some judges did not enjoy this, and had cases brought to district headquarters if they could. Violent crime was the main business, and highlands districts generated a disproportionate number of Supreme Court matters. I can recall once conducting 6 separate trials for murder in one day (at Wabag), possibly some kind of record.

The administration’s Department of Law provided a full range of government legal services in: civil litigation (including a very technical segment relating to land titles), contracts, conveyancing and land/land rights acquisition, statutory interpretation and other advisings, prosecuting, legislative drafting, policy advice, and supporting the Secretary in his ‘LegCo’ role. Court-related functions included solicitor and advocate roles.

The policy role covered all the legislative (‘lawyer’s’) areas for which the department was responsible, from courts to prisons to civil registration. There was one nominal policy position, held by Paul Quinlivan. Later, I did this job from 1968 to about 1973. Bill Kearney did it when I was away in 70/71, before he became head of the department after Lindsay Curtis’s two busy years. In theory there were other positions dedicated to law revision and ‘courts advising’, but these were not filled for most of the 60s due to lack of funding.

That nominal allocation of functions does not convey the true story. Joe Lynch, for example, as well as being a superb drafter was a perennial – and incisive – contributor to any policy discussion. All departmental lawyers took an intense interest in public policy to an extent unlikely in an Australian-based government agency.

The Supreme Court was led by Sir Alan Mann, appointed in 1957, as he said himself, by the Prime Minister ‘to help the Commonwealth Government establish an independent system of courts of a much higher level of proficiency’.

Unsurprisingly, those aspirations created tensions between the court and the administration, aggravated by the court appealing directly to the Australian Territories minister for support, and generally getting it.

In my view insufficient attention has been paid by analysts to the public solicitor. Although minuscule in terms of resources, that office represented a principle with important implications for the design of the justice system.

The principle was that any individual could in theory, and often-enough in practice to drive home the point, have recourse to whatever legal services might be needed to assert his/her rights under the law, the whole of the applicable law. Such rights were most likely to be asserted against the government. In practice, and inevitably, that principle operated selectively, according to the public solicitor’s discretion. The public solicitor guaranteed that the law applied
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in seamless fashion, with sophisticated remedies available to the least sophisticated. The public solicitor was a pre-
Derham innovation.

The deployment of an independent and aggressive public solicitor was, I think, unique among colonies at PNG’s stage
of development. Commentators on the PNG justice system can contest the aptness of that step, if they choose. There
are possible reasons for doing so. However, if they cannot address the validity of the policy, if they do not grasp the
implications of it, they are in my opinion poorly qualified to express any view on the design of PNG’s justice system in
the 1960s and beyond.

The PNG public solicitor was not only independent but generally the active adversary of the administration, although
sometimes of employers or business. 99% of the country’s inhabitants were potentially his clients. He represented
every one of them charged before the Supreme Court. Often the defence was vigorous, sometimes ingenious. (In
defending one client in 1964, the public solicitor attacked the basis for a common form of charging procedure, leading
to the spectacle of all judges sitting together to rule on the point: Ebulya (1964) P&NGLR 200. Another interesting
defence, that of so-called ‘accident’ in relation to those not uncommon ‘spleen deaths’, split the court and required
intervention of the Australian High Court to resolve.)

The public solicitor acted for land claimants against the administration, those claims usually being based on an attack on
the original acquisition. One of many such was the celebrated Era Taora (Newtown, Port Moresby) land case. Among
several propositions for the claimants was the somewhat disturbing one that the crown lacked the capacity, during the
British protectorate, to purchase land. The claimants succeeded before the Land Titles Commission, lost before a judge,
succeeded 2-1 in the PNG Full Court, and ultimately lost in the High Court (Daera Guba (1973) 130 CLR 353). All-in-
all an expensive exercise and one with a significant impact on available legal aid funds: maybe equal to a small bush
hospital, a short road, or a month’s salary for an economic planner.

Those examples of dedication to the cause of client pale before another one: the attempt to have declared invalid the
total PNG mining regime for inconsistency with the Australian constitution: Teori Tau (1969)119 CLR 564.

Without question, an independent and energetic public solicitor helped improve the regularity of government processes.
The best-known example is perhaps in relation to the obtaining of and relying on confessional evidence in prosecutions.
The prospect of court scrutiny – and of a setback (or lesson) for government - went beyond that. In many, many matters
claims of irregularity were made, often as the only basis of a case: the kiap or police officer had been oppressive or
unfair; the constable had made a threat; one of the ‘judges’ rules’ had been breached; the interpreter had erred (either
from incompetence or improper motive); the informant/luluai/witness had been greased; the prosecution was over-
zealous or unfairly targeted; someone had made an initial mistake and was trying to cover up; the wrong group had
been paid for the land; the investigator was too lazy to walk up the hill and had taken someone’s word for what was
over the top; someone was manipulating the court for their own ends; someone had not understood what had been said
– or, the old story, the witnesses didn’t really know of their own knowledge and were making it up to please the
officials.

Some judges more readily attached weight to such allegations than others. I have no doubt that the prospect of
government processes being hostage to unfriendly judicial scrutiny affected the design of legal processes in the 60s.

A brief word on the Australian territories department: Its legal resources were small compared even to those of the
administration. Sometimes an officer or two was borrowed from the Attorney-General’s Department, which provided
advice on major questions but otherwise was little involved with PNG. However, DOT lawyers could at least
concentrate on policy. Until 1 December 1973, the Australian minister had ultimate control over the content of relevant
PNG legislation. By reputation, and from a reading of departmental files, I believe Hasluck was an extraordinary
minister, exercising at critical points a personal and often informed control over policy. His successors as the 60s unfolded were more in the conventional mould: lesser in stature in the Commonwealth ministry, keener to avoid unnecessary controversy, and more reliant on departmental advice.

Again unsurprisingly, disagreement on some key issues was part of the natural order between officials of the on-the-spot administration and of the Canberra department. Communications in the early 60s were stilted and sometimes at cross-purposes. At the end of the 60s, a more fluent dialogue was established, Curtis had replaced Watkins, the telephone the telegram, the Davara on Ela Beach the stark choice (if choice there was) between the top and bottom pubs, and amicable visits by officials in both directions were routine. Priorities in the lead-up to handover was the significant area in which Canberra retained over-riding control.

**Viewpoints and arguments**

In the 60s, the suitability of the justice system for the indigenous population was an inevitable topic whenever lawyer and kiap met. A judge on circuit in a district centre would often stay (sometimes had to stay) with the DC. In conversation with Minogue J in early 1964, one DC host underlined his point on behalf of the indigenous population by flashing a copy of a paper purporting to document all the generally perceived shortcomings of the court.

This brought to a head a simmering issue about whether the Mann court was operating along quite the right lines. Mann obtained from the administrator a copy of the offending document and the background to it. In December 1963 a 13-page summary had been prepared in the Administrator’s Department of comments about the court system that had been invited from all DCs. The summary had then been circulated (apparently without proper authority, perhaps by mistake) back to the DCs.

These extracts give the general drift:

> It has been stated that, at least in some areas, even the Supreme Court, whose criminal jurisdiction formerly inspired awed respect, is now, however mistakenly, being regarded with contempt.

> Defence Counsel and officers of the Public Solicitor’s office should have made clear to them that their duty is to ensure justice, and not to attempt to enhance their reputations and defeat justice by employing legal chicanery.

While attitudes of indigenes to the then lower courts were favourable, the view of one DC was highlighted that ‘their attitude to the Supreme Court varies from indifference to contempt’.

On 11 March 1964, Mann wrote in grave terms to Minister Barnes ‘to inform the Government of a situation which is more than dangerous in the present state of development of the Territory’.

The upshot was that David Fenbury, head of the Administrator’s Department and the instigator of the exercise, was told not to undermine the Supreme Court. The DCs were given an admonishment by the administrator in terms agreed with Mann that ‘the authority, the independence and the impartiality of the courts are vital to the protection of the individual’.

The Australian minister had ruled in favour of the judges, but more to keep the peace, I think, than for reasons of principle. Barnes wrote a short letter to the Prime Minister. This, cleverly perhaps, avoided the issue of substance:

> The real trouble probably arises from the fact that the dividing line between what is proper and improper administrative activity is not a clear one and that the general principle of separation of judicial and executive functions means different things to different people.
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The PM’s office annotated the letter ‘seen by PM and returned’, probably meaning it had not received any personal attention by Menzies.

Although temporarily victorious, the judges did not fully digest the message that they had a huge communication problem vis-à-vis the indigenous population. Their main initiative, apart from exhorting the field staff to inform the indigenous population of the value of an independent judiciary, was to enlist the support of an international non-governmental organisation called the International Commission of Jurists (ICJ).

Minogue J convened a meeting of lawyers in Port Moresby to form a PNG branch of the ICJ’s Australian section. The plan was to evangelise as many field staff as possible in view of their ‘jurist’ role in exercising court powers. As the PNG secretary, I was responsible for forwarding on membership applications and subscriptions to the Geneva headquarters, which led in due course to the regular sending from there of brown-paper envelopes to jurist addressees in Wau and Wapenamanda, Tari and Telefomin.

These contained grey-covered tracts on the progress of the ‘rule of law’ in different parts of the world. I remember, in subsequent travels around the territory, seeing these despatches on dusty office shelves, sometimes opened, sometimes not, all unread, I would think, except maybe for a page or two.

Steered by Minogue, the PNG branch began preparations for a major ICJ conference sponsored by the Australian branch. This had administration endorsement and support, and was held, with an impressive range of distinguished participants, in the House of Assembly chamber in September 1965. Those sensitive to Port Moresby atmospherics were aware that the conference took place very much in the shadow of the 1964 controversy over the standing of the Supreme Court.

The papers were of a high quality and looked to approaching self-government. For purposes of this note it is best to separate two themes which although related have become unhelpfully confused, in my opinion.

(a) An independent and impartial judiciary

The first was the need for independent and professionally competent courts. This emerged unchallenged from the 1965 deliberations; it had become clear by then that, unless something very odd happened during the future constitutional planning process, independent courts would be entrenched in the constitution.

However, a host of secondary, more contentious issues was to surround the implementing of that principle – in the 60s and beyond: shortage of Papua New Guinea lawyers (or of properly trained ones), reliance on white judges insensitive to PNG culture, delays, too-lenient sentences, legal chicanery (preoccupation with technical rather than substantive issues), inaccessibility, usurpation of a role properly belonging to the executive, inability to adapt ‘western’ laws to Melanesian expectations, failure to give due weight to custom, and above all incomprehensibility to those affected by decisions.

Such issues were and are secondary because, except for comprehensibility, they are fixable by government by some application of resources, administrative energy or well-crafted legislation. If law reform effort was (or is) needed it was (and is) hedge-clipping or back-hoe work, not the moving of mountains or reversing of river-flows. The problem was not (is not) that judges are independent.

Judged by its deeds, the independent government had no strong interest in relevant legal change, and it would be unkind to lay its rhetoric alongside its performance. Early on, it ‘lost interest in qualitative and substantive reforms’ (Narakobi 1982) or simply ‘lost the will to reform’ (Weisbrot 1982).

*The indignity of a wholly imposed legal system raises few hackles, and it is interesting to note that overt neo-
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Colonialism in the form of large numbers of expatriate judges, magistrates and lawyers playing a leading role in administering a foreign-based system of law and courts does not provoke the same emotional response that overt economic neo-colonialism does. (ibid)

On comprehensibility, I do not know the answer for PNG, and I have not seen a convincing answer in any of the hundreds of comments I have read or heard on the subject. Perhaps it is all a matter of degrees and sincere effort, and if so the 60s Supreme Court could, in my view, have done much, much better. Nobody had the job of justifying the court except the court itself, and tensions with the administration prevented its officers from volunteering to do so. The court’s attempts to explain its decisions were probably near useless. I recall prosecuting two village women in Wabag who had strangled a younger third wife. Their repeated defence was ‘We didn’t use an axe. We only used a rope’. This, it appeared, was attributable to a lecture by Smithers J on an earlier visit when he said ‘This killing of people with axes is very wrong. It must stop.’

A dramatic example of failure of the criminal processes to meet expectations was the unhappy matter of Teitindau. I attach a note of my recollections of that episode.

Failure to provide adequately for village dispute settlement.

Here is an issue on which, it must be said, the colonisers were divided, sometimes passionately so. To obtain at once a sense of the history of it and of the principles involved the researcher should read chapter 6 of David Fenbury’s Practice without policy: genesis of local government in Papua New Guinea (published posthumously in 1978), and then David Derham’s response to that chapter and his 1964 (apparently unpublished) article (available in the National Library manuscript room).

It is strange that two very intelligent, articulate, genial men, each with the best of intentions for New Guinea, should feel such searing hostility towards the position of the other. Part of the reason, but only part, may be the language of the debate. In this area, words such as ‘justice’, ‘fairness’, ‘order’, ‘custom’, even ‘court’, mean different things to different people.

[Derham was my lecturer in jurisprudence and constitutional law at Melbourne University, and a reason, as a result of a 1960 conversation, for my going to New Guinea. In the later years of his PNG service in Port Moresby, David Fenbury was a kind of renegade philosopher-bureaucrat with many admirers, including me. On our occasional fishing ventures he carried a transistor radio, and listened to every news bulletin.]

Fast forward to the 80s. The law and order situation in PNG has deteriorated. The 1984 Clifford Report concludes that the best hope is to adopt a new policy based on the importance of informal and community institutions in the maintenance of order. The village courts should be further developed because they are well-suited to complementing and supporting informal and community structures.

Fast forward again, near to the present. Law and order deteriorates further. Generally, social scientists continue to favour approaches along the lines recommended by Clifford (Dinnen 1998, 2001). Village courts are endorsed as popular and generally efficient; ‘most of the time they serve to prevent the escalation of potentially disruptive disputes and resolve or manage them within the community’ (Goddard 1998).

It might seem to be a fair question whether failure to introduce village courts in the 50s or 60s was indeed ‘lack of planning and neglect’ by Australia.

Some comments:

The ‘failure’ was deliberate, being marked by specific decisions of Hasluck in 1955 and 1961 (in response to the
Those decisions were clearly directed to the needs of a future PNG state, rather than an assumed indefinite period of administration by Australia. Against this it must be said that in 1961 the planners, variously, assumed either (like Derham) high priority and abundant resources, or (like Hasluck, I suspect) that the job on the ground was much smaller than it was, or (like others) that ample time existed during which would occur a rapid and favourable tide of social and economic change, or a combination of those things.

Rather than remote decisions by Canberra, they were ones in which the administration’s lawyers in Canberra were relevantly implicated. The files of 1961 and 1962 show that in the policy-settling process the Department of Law (a) rejected Derham’s suggestion that for an interim period new courts confined to native civil matters be allowed; (b) strongly opposed Derham’s proposal for untrained native justices with a court role on the ground that only trained persons should have a power of decision over persons of any race; (c) opposed a suggestion by the judges that panels be set up in all villages with conciliation and arbitration functions, subject to supervision by the courts – this on the ground that it had ‘all the weaknesses alleged against the idea of native courts which was abandoned some years ago…’.

Although the Hasluck decisions were purportedly definitive, the issue remained under intense discussion and review by those interested, and the policy was reversed in 1972. In the meantime, the energies directed to other aspects of the court system were not wasted. My own view is that an Australian-designed ‘native court’ system in the early 60s would have thrown up divisive issues with which the then government agencies and the superior courts would have been ill-equipped to deal. It would probably have been a distraction, and less practical than the 1972 model.

Two red, or at least pinkish, herrings drifted through the debate. One was the African precedent. Pink is the key word here, because the underlying fact was that New Guinea on the map shared that colour with several parts of Africa.

Dr L P Mair, an anthropologist and specialist on Britain’s African colonies, had advocated, in 1945, a native courts system for New Guinea based on the African ‘Native Authority’ pattern. This led to the then Territories Minister E J Ward being persuaded to include in the Papua and New Guinea Act of 1949 provision for courts and tribunals ‘including native village courts and other tribunals on which natives may sit as adjudicating officers or assessors’.

Fenbury and Nigel Oram and some others constantly called up the African precedent. Fenbury’s eloquent and otherwise powerful plea to the 1965 ICJ conference (later reproduced as the oft-cited Kot Bilong Mipela article in the New Guinea periodical) placed more than a little reliance on it, citing British colonial administrators.

In the view of others, such courts were a heavily colonialist device tied to the British practice of ‘indirect rule’. They were phased out by the British in the 50s. Even if PNG in the 50s and 60s was regarded as being equivalent to Africa in the early 1900s, and such courts could have worked in PNG, Hasluck and Derham had eschewed the proto-colonial and gone straight to the pre-independence phase.

A little later (during 1967-1974) a succession of we expatriate lawyers undertook Professor Tony Allott’s ‘African Law’ course at London University rubbing shoulders with ex-colonial service lawyers and African graduates. We were told not only of the function of native courts as a colonial device to utilise chiefly authority but of the near-insuperable conflicts of rules where the two systems met. Moreover, as Morris and Read later wrote

*It was clear that the dual system of courts, which the newly independent East African governments inherited, would not long survive the ending of colonial rule with which the system, one of the features of which was a differentiation between the administration of justice to Africans and that to non-Africans, was identified in the minds of politically conscious Africans.* (Morris and Read 1974)
All-in-all, it would have been best if the African precedent had been left out of the debate. It might have been a little more relevant to argue for parallels with Pacific colonies, substituting Kiribati for Kenya. Derham v Crocker was a mismatch, but Murray v Grimble would make a more interesting contest. (Sir Hubert might have had the pugilistic credentials, but Sir Arthur had wrestled with octopuses.) (See Grimble 1952)

My second herring is more of the proportions of Moby Dick, with various persons from time to time playing the part of Captain Ahab. This was the proposition that somewhere out there was a body of customary law (complex and consistent) waiting only for the tools needed to ascertain and apply it to solve many (some thought some, some thought all) of the questions about a legal system for PNG.

Some of the main ideas about what that custom was can be roughly grouped as follows –

- fairly specific, and ascertainable and recordable, community understandings about some things. (This had better be at least partly true; the land tenure system depended on it.)
- concepts and ways of thinking, fundamental and widely followed. (eg need for compensation for wrongs, group responsibility, gift exchanges.)
- other traditional ways. (Variable, perhaps likely to change, but not trivial to those affected. Les Johnson has referred to the ‘arresting’ speech of Siwi Kurondo in the second House of Assembly mentioning various customs to be retained, including the traditions of polygamy and nursing pigs:

  We want no restrictions imposed to stop some of our ideas for looking after pigs…. In our area the women sleep with their pigs and I want this to be one of our customs that is continued. (Johnson 1990?)

what the village thought was a fair thing in the circumstances.

A good question was what law would ‘untrained’ ‘lay’ courts apply if they did not - could not be expected to - apply the ordinary (‘western’) law? Most white lawyers assumed that it would at least be something ascertainable by some external process. Derham had recommended that his interim ‘native matters’ lower courts apply custom but that ‘the requirements for acceptance of a custom must be laid down’.

At the 1965 conference, Smithers, then a judge in Australia, gave the main paper on the PNG justice system. He referred to a statutory requirement for field staff to record local customs, adding ‘I have never heard of any local customs being so recorded. I attribute this to the fact that save in terms that seemed too general to record, the practices observed were but a wilderness of single instances.’ He went some way to endorse formalising of village dispute processes, but added ‘it is essential that decisions be reached more and more by reference to settled rules.’

To one way of thinking, if there are no ‘settled rules’ there is no basis for knowing the ‘correctness’ of a decision, and hence no basis for review or correction. Nonetheless, a ‘court’ could be set up on that basis. The abortive Native Local Courts Bill of 1954 conferred powers of decision on appointed persons subject to review and supervision by a district officer. There was a right of appeal to the Supreme Court but no appeal could be allowed by reason of disregard by court or district officer of ‘legal forms or solemnities or any other legal rule (sic), provided substantial justice has been done’ (italics not in original). Without settled rules, the opinion of the reviewer as to ‘justice’ would be equally at large as that of the original decision-maker.

I believe that in the 60s it was this concern about no rules, more than worries about corruption or the pull of self-interest or clan loyalties that stood in the way of devolving court-type powers to village level.

However, if such powers were not simply devolved there were big problems in providing for village participation in the
regular courts, and in determining how and when to recognise and give effect to custom against the backdrop of a different and basically inconsistent set of rules. Bernard Brown grappled with those in his thoughtful, if rather tortured, 1969 essay Towards a People’s Court (Brown ed 1969).

In the result, those issues were avoided by simply devolving court-type powers with an unguided mandate to apply custom, even if this was of type (d) above. The possibility of conflict between the two sets of rules was reduced by pushing down the point of interface to as low a level as possible, jurisdictionally. The custom-applying mandate also served to some extent to define the persons over whom the jurisdiction could be exercised.

Towards 1975

The 1972 election for the third House of Assembly produced a ruling coalition led by the Pangu Pati. By late April 1972 a Ministry had been established which encompassed responsibility for virtually all the country’s affairs though still subject to restraining powers of the colonial power, restraint which in fact was never exercised. (Johnson 1990?)

Not very long after that, in Konedobu, Bill Kearney said to me ‘Will you go to a meeting in the ministers’ offices. They are going to establish village courts’.

At that meeting were Barry Holloway (a minister, Pangu Pati member, and former kiap), Joseph Aoae (PNG’s first professional lawyer, and understudy of the Department of Law head), and Jim Sinclair (a former kiap, then performing special duties in relation to provincial affairs).

The conversation was to the following effect. Holloway said ‘We’re going to establish village courts’. I said, ‘OK, mediation powers will fit in well with the current system’. One of the others (I think all, one way or other) said ‘No, that’s no good. They have to have real teeth’. I asked ‘What law would they apply?’ Someone said ‘Customary law’. I said ‘OK, I’ll rough something out’. I produced an outline in 3 or 4 pages for a further meeting. At that meeting a few changes were made, and that, basically, was the outline of the village court system that was introduced the following year with no significant contention. I think it is much the same in its essential elements as the scheme in force today.

The essential elements of the scheme were a broad but monetarily-limited dispute-settling function, a circumscribed penalty-imposing function, freedom to apply ‘customary law’, and a degree of control by the regular magistracy.

Naturally enough, the circumstances were very different in 1972 from those of 1960. The main difference was that the political judgments involved were for politicians whose authority derived from accountability to Papua New Guineans. Another change was that the outline of a neat lower-judicial structure had been developed with an autonomous magisterial hierarchy under a chief magistrate. This included a number of full-time ex-field-staff magistrates and, more significantly, thanks to Tos Barnett, a growing number of PNG magistrates. He had selected and trained a corps of mature persons to begin to take over the lower courts. Within a few years Hosea Mina had become the chief magistrate, succeeded by Joe Aisa. Village courts could be nicely tucked in as the bottom rung of that structure.

Of course, the numbers and resources of the regular magistracy would be hopelessly inadequate to supervise all the village courts that might be called into existence, but that was another matter.

Everyone thinking about the PNG legal system knew about the gulf between western and village approaches to dispute settlement. Peter Lawrence laid this out bluntly in his paper at the 1965 conference, a version of which was later widely available (in Brown 1969, and given emphasis by (then Justice) J R Kerr in his 1968 speech on the law in PNG). Lawrence, quoted by Kerr, had said it would be a grave mistake to assume that a legal system could be left behind by Australia that the inhabitants of the whole territory would automatically and immediately assimilate. However, Lawrence had some hope that the Australian system could more readily take root in urban areas where there was no
single body of customary law to resolve disputes between immigrants. He found some support for this from Charles Rowley and Nigel Oram. He thought this would not happen for some time in rural areas, where economic development would be needed to speed up the necessary social change.

Notwithstanding the ‘gulf’, in 1975 what was being left behind by Australia looked reasonably serviceable, except quantitatively which was a matter for the government’s own priorities: an independent judiciary headed by a Supreme Court, Australian-modelled but now staffed with relatively non-tendentious judges and with a charter to apply custom, much of which would be articulated by legislators with the help of a law reform commission; an autonomous magistracy with a graduated structure and members with a wide range of practical experience; a public solicitor’s office with some 17 years of combat experience; and a village-level arm of the court structure, admittedly a late addition, but capable of adaptation and expansion according to the aims and priorities of government.

There was also, available legally, traditional dispute settlement of the informal kind, meaning outside any express statutory authorisation. Fenbury had made a point that was often quoted:

_It is a disquieting fact that the indigenous community of TPNG has for many years been operating a widespread, completely unsupervised, and technically illicit legal system which has no contact with the territory legal system._

However, whether any traditional dispute settlement was conducted illegally would have depended on what the relevant persons did and whether those affected acquiesced in it. Even the Clifford Report recognised that.

It is entirely reasonable, and presumably acceptable to government, for people to use a mixture of their own and state resources, whether it be in the field of education, health or disputes. It is not necessarily inconsistent with the law for people to use its own formal provisions only when they feel they need them, and to use their own (community) remedies on other occasions.

(Moreover, where informal community processes are given a formal statutory framework, I would myself expect the possibility of at least technical breaches of the law to increase, and this may well have happened with village courts.)

In March 1976, at the end of his first year at the AIC, William Clifford convened a workshop on ‘the use of customary law in the criminal justice system’. (Governor-General Kerr attended to open discussions, declaring his ‘own past deep interest in this very problem in relation to Papua New Guinea’. He quoted at length from David Fenbury’s article.) Frost CJ, the Australian who was PNG chief justice at independence, referred at length to the Lawrence paper, adding optimistically that the effect of the social changes expected by Lawrence were under way and that ‘conditions thus exist which justify the hopes of the makers of the Constitution that a truly national legal system will take root’. He referred in generally approving terms to the village courts, noting that ‘if the system can prevent minor disputes erupting into violent crime they will perform a useful function’. The trend of the discussion, as summarised by Clifford, was that PNG had found a solution that might be considered for adoption elsewhere.

**Conclusions**

Without attempting to justify every pre-independence decision or omission in relation to the justice system, I think the main post-1945 decision-makers were genuinely concerned about what was best for PNG and that more recent (post-1980) suggestions that they were seriously ignorant of relevant facts about the country are wide of the mark, some ludicrously so.

Had Ward been the Australian minister through the 50s, native courts might well have been introduced then, but the 1954 ordinance, if enacted, had features (eg district officer powers and their insulation from judicial review) that would
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surely have generated contention and need for change before long.

Perhaps the 1973 village courts statute could have been introduced a bit earlier, but apart from the theology it would have been an unnatural late decision by Australia. Pre-self-government resources and labours were being directed to other matters, and it would have seemed an unnecessary leap in the dark. With field staff packing their bags, a full-time magistracy to provide support and connection to government needed to be put in place. While such a magistracy could have been put in place earlier, such speculation opens up issues about education, communications, roads and transport – and even housing. (A doctoral thesis could be written on the allocation of scarce housing as a determinant of sectoral development.)

As to theological issues, choose your theology. On insistence as to a single law, I think Hasluck and Derham were right as regards the towns.

Rural areas were different. However, Derham himself would have allowed special interim provision for native courts in selected areas, and Hasluck, as I read the files, was in 1961 open to be persuaded. The Department of Law was negatively influential there, and was probably itself influenced by a realistic view of the totally inadequate resources likely to be available for the split, de-kiapised approach suggested by Derham.

The Clifford Report makes a strong point, in my view, about the gap in 1984 between the state and rural communities, with an absence of administrative and economic links. In one of the more interesting parts of the Clifford Report, I note that (the then Senior Inspector) Joseph Kupo commends the performance of a confident and no-nonsense village court in a remote part of Chimbu Province, but says that that court is deteriorating in the absence of transport, communications, facilities and visits by the police and justice officials.

Perhaps something went wrong, or at least an opportunity was unnecessarily lost, in the running-down generally of rural links following the withdrawal of district administration field staff in the early 70s. The criticised failure to have in place, notwithstanding that withdrawal, a far-flung and accessible court structure, with physical capacity to support village-level courts, seems to me to be a crude scapegoat for priorities decisions of a broader kind that failed the remotest areas, perhaps most rural areas.

If there had been any prospect during 1960-1972 that resources would be available for a far-flung and accessible court structure capable of supporting village-level courts, trained, housed, mobile and otherwise equipped, I am certain that lawyers’ preoccupations with ‘western’ justice would not have stood in the way of it. However, maybe then the world would have been so different that there would have been no need for village courts.

Sinclair DINNEN

I focus on a couple of general points that do not directly engage with what Geoff has just said, but which may have a sort of indirect bearing.

On the whole issue of the notion of the collapse of law and order, which has become a subject, a kind of regular way of representing the ? ? ?. I think it is important to stand back a little bit and raise the issue of collapse: collapse of what? It is in relation to the broader issues about state failure, and ? in a number of different respects. Put very, very simply, I see the problem in the area of law and justice as ? deficiencies of the institutions there ? ? of the state per se, as being less about collapse and more about the ? ? adequate. So putting it in a different slant?, in a different way. In the area of law and justice, whilst I take the broad tenor of that sort of approach, in that there wasn’t possibly much more that could have been done other than put into place the system that PNG inherited at independence, I still think that it is very important to challenge the state-centred orientation of virtually everything that we have been talking about in relation to a situation where most people live beyond the state and where the state is, for many people, an extremely remote
presence in their daily lives. That does not mean that there is no law and order beyond the state?. There is something. I was not around in PNG at Independence, and I am struck very much by more recent developments. In a situation where we are talking about law and order, we tend to look at very negative developments.

There have been really important developments, for example, in Bougainville in relation to the resolution of conflict, where the state has been notable by its absence during the nine-year war. A lot of the resolution that took place on Bougainville, at the grass roots level, rather than the formal authority level, has actually occurred using a fairly creative approach to a mixture of ‘tradition’ and newer structures. What we see there – there are obviously many deficiencies – but is nevertheless indicative that there are resources at the informal level that could be utilized; in that case, were utilized, and in many other parts of the country have been utilized, on a daily basis. It is very difficult to evaluate that success because when there is no problem, we are not really all that interested. But in the law and order problems that we hear so much about in PNG, one, they are extremely uneven in terms of their distribution. As Ted was saying the other day, they do tend to follow development, so they are concentrated in the urban areas, along the highways and in areas of resource development. Really, in evaluating the system, I think we cannot simply look at how the formal sector has been able to manage or otherwise, the problems of criminality and what have you. It is also important to look at those parts of the country where there have not been problems. Why haven’t there been problems? I would suggest that that it is not all to do with the effects of the formal law and justice system in those areas? ? at work. So one of my treatises is that in talking about issues, very perverse, complex issues we could tend to subsume rather complicitly under this banner of law and order that there are lots of things going on and in relation to responding to resolving disputes, there are a lot of things that are going on beyond the formal sector. It is very important to bear that in mind.

At the macro level, if we are looking back at the colonial period, we tend to think, or quite often it is argued, that the colonial system of order was very successful, particularly if we contrast that with what has happened since. Often there is a kind of an image of a system of *kiap* justice which, again, looking back, I do not think is really borne out. ? an extremely weak sort of colonial system. I think another point that Ted made the other day that in the years immediately preceding self-government and Independence that system itself was beginning to look extremely shaky as it came under increasing resistance in different parts of the country. I am not sure that it would necessarily have fared all that well, had things continued.

I think in the broader sweep of things – we’ve been talking about colonial administration and its significance – we are talking about an extremely short period of time: less than a hundred years in total in parts of the country where most people live, thirty years in some cases. In the broader sweep of history, colonial administration is a blip on the screen, and it is no surprise that the pre-colonial continues with such a significant influence on all aspects of life in PNG, including the way in which the institutions of the state have developed. My broad criticism of the law and justice system, the formal system as it has been developed. I think it is also important to recognize that Australian inputs in this area have probably been greater since Independence, in many respects, than they were before. Over the last 15 years we have seen an enormous input into initiatives for peace from the late 1980s and more recently of course in Attorney-General’s and the Ombudsman’s Commission. All these institutions are themselves the subjects of large capacity building projects. Again, I think it might have been Ted who was talking about the difficulty in distinguishing between colonialism and what happened thereafter.

In relation to a lot of what has been happening of late, and also taking it back to the establishment of a formal system in a very short period, during this period of ? modernization of self-government and Independence, the analogy that I like is that you cannot start building a house without first building foundations. It was not as if there weren’t foundations. There were foundations, but they were very different foundations in this area of social regulation, and in a way a significant part of the problems since has been the way in which these foundations have insinuated themselves: the
interaction between the formal and the informal. It is not that adaptation has not taken place, it has; but it has taken place in a non-deliberate, not necessarily thought out way. I think that the outcomes would have been much better had that process been given the serious attention that it merited.

**Administration of Justice: Law and Order**

**Nick O’Neill (prepared paper)**

In mid 1968, I was an inexperienced member of the Office of the Public Solicitor going on my first criminal circuit with the Supreme Court. We got on a succession of smaller and smaller aircraft until we reached Ambunti, a great distance up the Sepik river in East Sepik district. I travelled with Justice Clarkson and his associate, Bret Clement, together with two prosecutors, Ilse Luke? and Joseph Aoae. Eamon (Ted) Lindsay and I were the defence counsel. We were generously and courteously accommodated by the kiaps at Ambunti. However, they were clear about independence: independence, but not in their lifetime.

The second aspect of this circuit was that the other person doing it for the first time was the first Papua New Guinean law graduate, Joseph Aoae. He had no Papua New Guinean colleagues for a year or two until Buri Kidu joined him from Queensland University. The third Papua New Guinea law graduate was Bernard Narokobi.

It was not until early 1972 that the first lawyers graduated from UPNG. Illinome Frank Tarua was one. Many of the early graduates from UPNG became successful lawyers. They include the present Chief Justice and Deputy Chief Justice as well as a number of senior members of the National and Supreme Courts. They had the benefit of a very strong law faculty which included Rob O’Regan and John Griffin, both now QCs in Queensland. Jack Goldring was an academic in PNG and NSW before being appointed a District Court Judge in NSW. Peter Bayne also joined the faculty in the early 1970s.

While the graduates from overseas and Papua New Guinea had good legal educations, they were expected to take very substantial responsibilities very early. Illie Tarua was thrust into the middle of the discussions and work necessary to bring Papua New Guinea’s constitution into existence and to see to the country being ready for independence by 16 September 1975. Both Buri Kidu and Bernard Narakobi took active parts in this process. Buri Kidu soon became head of the Prime Minister’s Department and then had to take on the Chief Justiceship at a very early age.

When I returned to PNG in 1996 (as a consultant to AusAID on the pre-feasibility study about strengthening legal institutions), I noted too few lawyers in government service for the real needs of that service. Also, many of them were junior. Many of those who got their early experience in government service were inveigled into private practice, because it was so much better paid and the working conditions, both in terms of accommodation and support services, including library and research services, were so much better.

**Development of the Common or Underlying Law of Papua New Guinea**

Andrews, Chalmers and Weisbrot accurately sum up the attitude of the pre-independence criminal justice system to the question (*Criminal Law and Practice of PNG, 7-8*) ¹

The criminal code of Queensland was adopted as the Criminal Code Ordinance of Papua in 1902. When New Guinea was beginning to be administered by Australia in 1921, it too adopted the Queensland Criminal Code as part of its statute law. Both before and after the two world wars, expatriate lawyers, including judges, were happy to apply the principles of criminal responsibility, substantive offences and rules of procedure and evidence embodied in the Queensland Criminal Code, but based on common law experience in the English common law world. In 1963, the

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Native Customs (Recognition) Ordinance came into force allowing the recognition of PNG custom. As Andrews, Chalmers and Weisbrot point out, in practice consideration of custom was limited to the determination of reasonableness or otherwise of an accused’s retaliatory act in provocation cases. They note that upon sentencing, the courts looked to the relative degree of sophistication or westernisation of the offender, rather than ascertaining or recording custom. If the offender had lived in an urban area or was otherwise deemed sophisticated enough to be familiar with the introduced system of law, he or she was treated in the same way as an Australian offender. Where an accused person was perceived to be ‘primitive’ or ‘unsophisticated’, the courts were more prepared to extend the scope of the provocation defence and to give lesser sentences upon conviction.

The Constitution of PNG states that custom is adopted and shall be applied and enforced as part of the underlying law. It also states that an Act of Parliament may provide for the proof and pleading of custom, regulate the manner or the purposes for which custom may be recognised, applied or enforced and to provide for the resolution of conflict of custom. The constitution also provided for the adoption of the common law of England insofar as it was not inconsistent with the Constitution or any constitutional law, inappropriate to the circumstances of the country or inconsistent with custom. The common law was to be applied and enforced as part of the underlying law. The Supreme and National Courts in particular were charged with the duty to formulate appropriate rules in particular cases as part of the underlying law. In addition, they were charged with the duty of ensuring, with due regard to the need for consistency, that the underlying law developed as a coherent system in a manner that was appropriate to the circumstances of the country from time-to-time, except insofar as it would not be proper to do so by judicial act.

My understanding is that despite their constitutional charge, the judges, particularly the expatriate judges serving in New Guinea around the time of independence, were not enthusiastic about developing the underlying law of PNG. My recollection is that when Bernard Narakobi became a judge of the National Court, he took some action in this regard; however, his attempts were rebuffed by colleague judges sitting on the Supreme Court. Bernard Narakobi’s efforts related to the recognition of custom in relation to criminal matters. The view of his fellow judges was that customs had to apply throughout PNG before they would be recognised. Such a test could never be met because custom is necessarily local in nature in the way it is developed and applied. The best that can be hoped for nationally is the recognition of a group of similar customs that apply throughout the country.

The PNG Law Reform Commission and its role in the development of the statute and underlying law of PNG

In 1975, before independence, the PNG Law Reform Commission (PNGLRC) came into existence. The legislation provides that only Papua New Guineans could be members of the Commission. Bernard Narakobi was appointed Chairman, Francis Iramu as Deputy President. Other members included Mek Taylor, Charles Lepani and Nahau Rooney. I was appointed Secretary.

In relation to the statute law, the PNGLRC moved quickly to deal with the problems created by the legislation enacted in the House of Assembly in 1974 imposing mandatory life imprisonment as the punishment for both wilful murder and murder. It was very soon recognised that a mandatory life sentence was an inappropriate sentence for every homicide that amounted to either a murder or a wilful murder. The death penalty for wilful murder had been removed in 1974.
and the House of Assembly had refused to support its reintroduction.

The PNGLRC recommended the maximum penalty for wilful murder be imprisonment for life and that recommendation was adopted by the House of Assembly and came into force in 1976.⁸

By a reference dated 10 June 1975 the Minister for Justice, Ebia Olewale, asked the PNGLRC to enquire into and report to him as soon as possible on how to effect the repeal of the Native Regulations of Papua and the Native Administration Regulations of New Guinea. The PNGLRC reported to the Minister, 10 October 1975, recommending the repeal of both sets of regulations and explaining why.⁹ The recommendations of the PNGLRC were duly adopted and the highly discriminatory regulations were repealed with effect from 20 February 1976.

In what was in fact its first report, in September 1975, the PNGLRC recommended that the Police Offences Ordinances of Papua and New Guinea be repealed and be replaced by a Summary Offences Act which contained offences relevant to the circumstances of PNG.¹⁰ Again, the PNGLRC was acting on a reference by Olewale as Minister for Justice, to report to him as soon as possible on the appropriate means of restating and modernising the law relating to summary offences in PNG.

When the consequent Summary Offences Act was enacted in 1977, the offence of placing a flowerpot unguarded in an upstairs open window was removed from the criminal law of Papua together with a large number of other inappropriate offences including flying a kite to the annoyances of the neighbours. The offences that were included were about protection of persons, protection of the neighbourhood and protection of property. An important factor was the repeal of the main vagrancy law of both Papua and New Guinea, the offence of having no visible means of support.

The PNGLRC’s report was not unanimous on this point. One member considered that this offence should remain. That member’s opinion was that police should have the power to arrest persons they find without lawful means of support and take them to court. If the court was satisfied that the charge was correct, the court should have the power to order those people back to their village and order them not to return to town. In this member’s view, it was the responsibility of the relatives to meet the cost of transporting their unemployed relatives back to their villages.¹¹

The majority were of the opinion that urban drift and unemployment were serious problems. However, they felt that retaining the offence of having no visible means of support would not solve these problems. In their opinion, using the criminal law to control social and economic problems was not only ineffectual but also inappropriate and unnecessary.¹²

As part of the process of replacing old police offences legislation, the House of Assembly enacted new Arrest, Search and Bail Acts in 1977. This suite of legislation, recommended by the PNGLRC, armed the police and PNG generally with modern, updated and constitutionally valid legislation which was easy to understand and which provided a proper basis for the police to maintain law and order throughout the country and act in an appropriate and lawful manner in dealing with suspected offenders.

This was a major contribution to the criminal law as it affected Papua New Guineans in towns and villages. This legislation was enacted by Papua New Guinea citizens acting on the advice of other Papua New Guineans who were the Commissioners of the PNGLRC.

The PNGLRC is a constitutional body in that Schedule 2 of the Constitution provides that an act of Parliament shall

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⁹ Law Reform Commission, Report on Abolition of Native Regulations, report 2, October 1975
¹⁰ Law Reform Commission, Report on Summary Offences, report 1, September 1975
¹¹ Ibid., p 14. See also page 15.
¹² Ibid., p 15. See also pp 15-17.
make provisions for and in respect of a Law Reform Commission. It also provides that only citizens may be members of that Commission. The Constitution also provides that in addition to its other functions and responsibilities under any law, the PNGLRC is to have a special responsibility to investigate and report to Parliament and to the National Executive on the development and on the adaptation to the circumstances of the country of the underlying law. Furthermore, it has an ongoing responsibility to report on the appropriateness of the rules and principles of the underlying law to the circumstances of the country from time-to-time.

The PNGLRC took this constitutional responsibility very seriously. In September 1976 it issued its working paper No 4, *Declaration and Development of the Underlying Law*. In February 1997 the PNGLRC issued working paper No 6, *Criminal Responsibility: Taking Customs, Perceptions and Belief into Account*. These working papers and the proposals in them were the subject of consultation in lay and legal circles. In November 1977 the PNGLRC published its 7th report, *The role of customary law in the legal system*. It recommended that custom be taken into account in determining criminal responsibility and also into account in relation to the punishments available on sentencing. The Commission expressly rejected the strategy of giving lesser sentences as the solution to the conflict between common law notions of criminal responsibility and traditional notions of such responsibility. The PNGLRC’s proposals are set out and discussed by Andrews, Chalmers and Weisbrot. They also deal with the PNGLRC’s working paper relating to detention for interrogation and confessions and other reports relating to the criminal law.14 Bernard Narokobi and Peter Fitzpatrick have both discussed the work of the PNGLRC elsewhere.15

In contrast to the approach of the PNGLRC, in 1974 the parliamentary counsel, Joe Lynch, combined the Criminal Codes of Papua and New Guinea into one document. Very few changes were made. Although railway offences were omitted from the Criminal Code 1974 (PNG), the offence of bringing a seducing message from a pirate remained.16 More importantly, the opportunity to reform the Criminal Code so that it better reflected the world view of Papua New Guineans was lost.

In summary, the PNGLRC moved very quickly in its first two years. It reformed that part of the criminal law that is most applied to the people. It developed and issued for consideration proposals for the indigenisation of the country’s underlying or common law. Also during this time, the PNGLRC worked on reform of the civil law. It issued a major working paper on fairness of transactions and subsequently proposed a Fairness of Transactions Bill. The Bill would apply to all contracts, even those valid under common law, making them subject to judicial review. Contracts which were on an objective view unjust or entered into on an unequal footing could be voided or modified.

**Land Issues** (AM, 4 November 2002)

In the first presentation to this workshop, John Greenwell referred to the insurrection on the Gazelle peninsula and the problems in Bougainville as two significant issues.

After about four years dealing with criminal trials and land appeals in the Public Solicitor’s Office, Port Moresby, I moved to the Department of Law at Konedobu as Principal Legal Officer (Law Reform). Late in 1972 or early in 1973 I was appointed Counsel Assisting the Commission of Enquiry into Land Matters established by the first Papua New Guinean Minister for Lands, Albert Maori-Kiki. Alan Ward was the leading consultant expert to the Commission of Enquiry. He has set out clearly the key issues relating to the establishment of the Commission of Enquiry and its work.  

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16 Criminal Code 1974, s. 80(d)(iii).
Hindsight draft record, 4 April 2003
Jim Fingleton, Research Officer to the Commission of Enquiry, became the public servant in the Department of Lands responsible for implementation of the recommendations of the Commission of Enquiry.

What I want to do in this paper is set out some of the land rights issues as they provide explanations for the ‘insurrection’ on the Gazelle peninsula and the dissatisfaction of people in Bougainville in relation to the mine at Panguna.

**Land Issues on the Gazelle Peninsula**

When I was Counsel Assisting the Commission of Enquiry into Land Matters, I had the Lands Department draw up two maps of the Gazelle peninsula area around Rabaul and Kokopo. The first map, encompassing a smaller area than the second, showed 60% of the land within it had been alienated from the traditional owners, mostly Tolai people. The second map covering a much larger area, nevertheless showed 40% of the land had been alienated. Most of the land in and around the towns of Rabaul and Kokopo had been alienated as well as vast tracks including virtually all of the best land of the Gazelle peninsula. These two maps, of themselves, showed why there was dissatisfaction on the Gazelle peninsula.

From 1886 to 1918 New Guinea was a German colony. It was invaded in 1918 by Australian troops and had a military administration until 1921 when the League of Nations, established under the Treaty of Versailles, 1919, made former German New Guinea a mandated territory. Australia was given the responsibility for carrying out the mandate.

Early in the mandate period, a decision was made to convert all land which had come into German ownership, either in the hands of planters and others or the German government, to be converted into registered titles under the Torrens system of land registration developed in South Australia and adopted throughout Australia. The value of torrens title to its owners is that it gives them an indefeasible, government guaranteed title to the land, enforceable against all others. As part of the process of converting this land into torrens system title, there was the possibility of some investigation, particularly if there were native claims to the land. It is not the purpose of this presentation to go into that matter. The attitude towards New Guineans at that time, the difficulties in any event of communicating with them the fact that they may claim as still their own, land that was being the subject of a tenure conversion process, their inability at the time, through lack of education and experience to understand the issues, make it difficult to believe that the process of checking on possible New Guinean interests in the land was taken as seriously as it should have been. Another reason for being cynical about the process was that when the Chief Justice of the Central Court of New Guinea, Sir Beaumont Phillips undertook a number of enquiries and, in some cases, found that the land had not been properly obtained from the customary owners, the law relating to such enquiries was tightened up.

Nevertheless, registration of the alienated land in New Guinea continued until the Japanese invasion in January 1942. During the time between the initial invasion and the recapture of Rabaul late in the war, the land register for New Guinea was lost.

Australia began again to administer New Guinea, this time as a Trust Territory of the United Nations. In 1951, the New Guinea Land Titles Registration Ordinance (NGLTRO) was enacted for the purpose of compiling a new register and official records relating to land, mining and forestry to replace those lost or destroyed in the Territory of New Guinea during the Japanese invasion of that territory and for other purposes. The NGLTRO provided that anyone who claimed an interest in land, defined not to include a native customary rights, and to be entitled to be registered on a lost register could make a claim to the Commissioner of Titles to be registered on the new register.

There was then a process which allowed for the possibility of native rights in the land to be considered. This process was filtered through the Department of District Administration. But it was the responsibility of the Director of District
Hindsight draft record, 4 April 2003

Administration to refer the matter to the Commissioner if a native or native community claimed to be entitled to native customary rights in the land and on the appointed date, 10 January 1952.

The Commissioner of Titles was obliged to investigate, hear and determine claims, objections and references concerning the entitlement of people to have titles to land restored to the register.

One claim for a title to be placed on the new register was made in relation to the plantation Varzin. A New Guinean man, Tedep, claimed on his own behalf and that of his vunatarai as did another person and their vunatarai, from Tagi No 1 and 2 villages that they had native customary rights over the land. The Commissioner of Titles did not accept this and issued a final order for the title to Varzin to be registered on the new register.

Tedep appealed to the Supreme Court and in 1963, Mann CJ heard the matter. He set aside the Commissioner of Titles’ final order and directed that a certificate of title issue endorsed that the native communities in question had unrestricted ownership and right to use and enjoy the land.

The matter was then taken to the High Court of Australia.17 The five Judges who heard the matter were unanimous.18 They held that the destruction of the register did not destroy the title. Consequently, if it is was possible to show by secondary evidence that registration had either taken place or probably took place, that was enough for the claim to succeed entitled to the land to be placed on the new register. There could be no enquiry into whether or not the land was properly obtained from its traditional owners in the first place.

The claim of the traditional owners was that land had never been legally alienated. One portion of it had been illegally sold by a particular person and the rest had been illegally confiscated by the Imperial German Government in 1902 or 1903. The evidence on this question was unclear. The evidence was clear however that the land was owned by non-native owners during the German regime and purchased from the Custodian Of Expropriated Property prior to World War II.

The Varzin case settled the conflict between the two opposing aims of the NGLTRO, namely on the one hand to recreate the register of Torrens system titles lost during World War II and on the other hand, allow the New Guinea people to assert their claims to land that was subject to the land title restoration process. The resolution was that, because of its indefeasible nature, once the existence of a pre-war title was sufficiently demonstrated, it prevailed over all other claims and they could not be considered.

Other cases from the Gazelle peninsula confirmed this matter. In relation to Wangaramut plantation, there was evidence of use by local people between the wars. While there was an argument about whether or not there was a registered encumbrance over the land in favour of the Director of Native Affairs as Trustee for Natives, the evidence of use by local people between the wars could not prove the existence of such an encumbrance. Again the traditional claimants were unsuccessful.19

Another case should be mentioned relating to pieces of land called Japlik and Vunapaladig because the traditional owners were told that they had been unsuccessful in their claim only about a month before the District Commissioner, Jack Emanual, was murdered in 1971. The traditional owners went onto the land to prevent the resettlement of the land by others. They claimed that they had a right to be on the land because from time immemorial, they owned the land which had never been used by others. A Full Court of the Supreme Court of the Territory decided that because there was a restored title to the land, no claim of right could be made to the land contrary to that title. Furthermore, adverse

17 Custodian of Expropriated Property v Tedep (1964) 113 CLR 318
18 Barwick CJ, McTiernan, Kitto, Taylor andf Menzies, JJ
19 Director of District Administration v Custodian of Expropriated Property (1969-70) PNGLR 410.
possession of the land could not give a better title than the registered title. William Kaputin, brother of John Kaputin and one of the first Tolai law graduates, comments on these matters in a book edited by Peter Sack. Kaputin notes that in many cases those purchasing the land paid salt, nails, tobacco, axes and lap laps for the land. He also notes that in other cases, Tolai allowed some of their land to be used by foreigners on the understanding that it would be returned when it was no longer required. He notes that this was a traditional practice amongst Tolai. He also notes that instead of returning the land, the foreigners registered the land and obtained indefeasible titles to it.

Kaputin concludes his article:

In conclusion, I Tolai, voice here a cry from the depths of despair to which the Tolai people have been reduced in their struggle for justice over land; now they appear to be totally disillusioned, alienated from the fountain of justice from which they were meant to drink.

The despair and disillusion on the Gazelle peninsula had to be addressed. However, some appropriate steps were taken. These matters are taken up by others.

**Land on Bougainville**

On the first day of the workshop, Ross Garnaut pointed out the importance of the mine at Panguna as a source of income for the government. The mine did provide a very substantial portion of the government’s income from tax for a substantial part of its seventeen years of operation. As Garnaut pointed out, the resources rental tax notion written into the arrangements with the mine operators acted as a model for the government to raise revenue from other mining ventures.

While there were strong positives in PNG generally, in having the Panguna mine, there were substantial negatives for the local people. To give a sense of the feeling of the Bougainville people about how their land was taken from them in order to set up the mine, it is appropriate to quote from an article by three Bougainvilleas, a law graduate, Theodore Miriung, and two economics students, J Dove and M Togolo in Peter Sack’s book,

The immense copper project on Bougainville which is supposed to pay for much of the future of this country is at the same time its greatest colonial legacy. Especially the events surrounding the resumption of land for the project – a woman grappling with police, the tear-gassing of the people, police poised above the ground to watch the survey pegs – will always be poigniant reminders of the true character of the so-called negotiations between the people and the Administration. For it must be stressed right at the beginning that the responsibility for what happened lies primarily with the Administration and not with the copper company. What it failed to achieve by peaceful means, it determined to achieve by resorting to force. It is almost impossible to understand that, in the age of decolonisation, democracy, and advanced technology, a government could resort to such crude forms of demands from simple, defenceless people whose very livelihood was at stake.

The Administration’s actions gave a lie to its role as a protector of the people’s rights and interests. It was all too clear that economic expediency was uppermost in its thinking; the welfare of the people was accorded a mere token consideration.

A lawyer from the Public Solicitor’s Office was sent to Bougainville to act on behalf of the native owners whose land

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20 Administration of TPNG v Blasius Tirupia (1971-720 PNGLR 229
22 Ibid., 159-160.
24 Ibid.
was being compulsorily acquired for the mining site. He had no resources and no support. It was a case of David against three Goliaths, the mining company, Conzinc Rio Tinto, the administration of TPNG and the Government of Australia.

While it is true, as Garnaut states, that Bougainville people gained employment at the Panguna mine and elsewhere as a result of mining operations and some learnt substantial skills there, the interests of the landowners were substantially disregarded and the environmental effects on their land and their food resources caused by turning at least one of the rivers into a tailings drain, were not planned for, nor were steps taken to ameliorate or overcome these environment effects.

Experience of the Panguna mine left Bougainville people with the sense that their land rights and interests were being disregarded by the administration.

**Land dispute settlement**

It was apparent to lawyers in the Public Solicitor’s Office that the land dispute settlement mechanisms operated through the Land Titles Commissioner were not effective. The Commission had more work than it could manage with its resources. Also, the mechanisms used for resolving disputes were not very sophisticated. For example, a common way of deciding land disputes between clans was to set the boundaries as they were at the time of contact. The land boundaries were treated as settled as at the time the kiap arrived. It was clear that a much more subtle system of land dispute settlement was required where a range of factors including the economic and social needs of the clan groups in dispute had to be considered. There matters were taken up by the Commission of Enquiry into land matters which made recommendations as to a new land dispute settlement system.

**CPC’s contribution to the constitutional provisions for the administration of justice**

John Ley (prepared paper)

I address three major issues on which recommendations were made by the CPC, accepted by the House of Assembly and the Constituent Assembly and incorporated in the Constitution:

- the context in which the CPC emphasised the rule of law to ensure constitutional protection of the independence of the judiciary;
- the background to the CPC’s recognition that in carrying out their judicial role all courts should ‘take full account of the goals of the society in which they live’ (CPC 1974: 8/1);
- and the basis on which the CPC recommended constitutional protection for the Public Prosecutor.

My experience before being Counsel to the House of Assembly included six months in the Crown Law Office in Port Moresby and more than five years in the Public Solicitor’s Office, in Port Moresby and Rabaul. As defence counsel, I went on circuits with Supreme Court judges. (On my first circuit I was at the other end of the bar table from Geoffrey Dabb, a prosecutor, and on my second, Fred Chaney was prosecuting). Other circuits, with the Land Titles Restoration Commissioner, Dinny Kelliher, heard land titles restoration claims, arising out of the destruction of the Land Titles Register during the Japanese occupation.

During most of the period 1966 to 1969 I was Deputy Public Solicitor, Rabaul and had daily professional and social contact with the Tolai and other Papua New Guineans. This work gave me valuable insights into the system of administering justice and into land issues involving land alienated by the German Administration and the Australian Administration. My experience was during the 1960s, a period of substantial change in the legal system. A year in London studying areas of law relevant to developing post colonial societies helped my understanding of the issues faced by the CPC.

**Some instances of Papua New Guineans’ experience with the colonial legal system**

My perspective on the impact of the introduced legal system did not compare with that of some members of the CPC, who had witnessed many adverse outcomes of cases dealt with by the colonial administration, of which the judiciary often seemed to be an unjust integral part. This latter comment applies particularly to cases involving alienated land...
matters (with interesting exceptions during Kelliher’s period of office) and cases involving highly charged political issues relating to taxes payable to the ‘multi-racial council’, the alleged stealing of the keys to the council and cases concerning the establishment of the Bougainville Copper mine.

Geoffrey Dabb has spoken eloquently and with justification about the considerable and largely successful efforts of Sir Alan Mann and his fellow judges, and his successors before independence, to establish the independence of the judiciary from the executive - and indeed from the Australian Government. His views about the important role that was played by the Public Solicitor’s Office are also well founded.

However, in key matters with political overtones, involving claims by plantation companies, the Administration, missions and other expatriate companies and individuals for restoration of title to alienated land, Papua New Guineans had few successes before the courts, notwithstanding the strong representation provided by the Public Solicitor’s Office headed by WA ‘Peter’ Lalor.

For example, in the celebrated case of Varzin, an expropriated property on the Gazelle peninsula, Tolai claimants had an unexpected victory before Chief Justice Mann in their efforts to recover their rights to traditional land near Rabaul. They had argued that the land had been illegally obtained, in part, under German Administration and, as to the balance, that it had been illegally confiscated in reprisal for the murder of the wife and child of the German occupier, Wolff. To the claimants’ chagrin, the full High Court of Australia overturned Mann’s Supreme Court decision. The High Court determined that the Australian Custodian of Expropriated Properties had a valid title exclusive of any ‘native rights’, as he had a duplicate certificate of title which had no endorsement of such rights on its face.

Ian Downs says that “The legal gymnastics of the Varzin case-------left the Tolai people permanently embittered and with little faith in the courts’ (Ibid:173)

In evidence in a criminal trial arising out of the murder of DC Jack Emmanuel in 1972, Public Solicitor Lalor said :

‘When it became clear to increasing numbers (of Tolais) as case after case was determined, that no matter how valid were their claims they would not be recognised as against existing titles, the resentment against the system was such as to induce moves ----to alter the legislation’ (Ibid:333). Indeed they went further, eventually taking direct action to occupy a number of plantations on the Gazelle Peninsula.

Similarly, although the Public Solicitor provided skilled legal representation of Bougainvilllean owners of land being alienated by the Administration, for the Panguna mine complex in 1966, the High Court rejected vehemently the owners’ argument that the PNG Mining Ordinance, the basis for the compulsory acquisition of their land, was invalid. (Denoon, 2000)

Even as late as 1970 the Public Solicitor’s independence in determining who would be granted aid, and on what basis, there being no statutory criteria, was strongly challenged. The Secretary for Law, Lindsay Curtis wrote to Lalor in relation to Mataungan applicants for legal aid who were being prosecuted for alleged evasion of council taxes.

The letter, disclosed to the Australian Parliament by Barnes on 17 September 1970, indicated that Curtis was directing the Public Solicitor on how he exercised his discretion whether to grant aid in these cases. Lalor unsuccessfully appealed against this direction to the Territory Public Service Board. However, he ‘refused to accept the Board’s decision and the independence of the Public Solicitor’s Office was restored when the Administrator intervened.’ (Ibid). John Kaputin was well aware of this East New Britain context, as he lived in Matupit and had been intimately involved in representing and assisting those Tolai who were directly affected by the cases. Stanis Toliman, another Tolai CPC member, and Angmai Bilas an experienced MHA from Madang, were also well versed in the legal issues on the Gazelle Peninsula. John Momis, having been involved in the opposition to the mine, was familiar with the broad issues concerning landowners at the mine site, though not with the cases taken up by the Public Solicitor’s Office.

The CPC’s consideration of the issues concerning the administration of justice

Papua New Guineans who responded to the CPC’s discussion paper, in early 1973, on the administration of justice (including questions on the desirability of protecting the Public Solicitor’s Office) and CPC members themselves, were
strongly in favour of the constitution ensuring that the courts and the public solicitor were independent. The CPC recommended accordingly.

In its final report the CPC said:

*It is a fundamental principle of any free country that the men and women who sit to hear and determine disputes that come before them as members of the judiciary should not be improperly influenced to make decisions for or against any particular person or group. The Committee has made a number of recommendations in this report designed to ensure that people of Papua New Guinea are governed by law, not according to the whims of powerful individuals or groups. That aim, in fact underlies the very idea of having a constitution at all.*

*We believe that the cardinal principle that the courts should be independent of the legislature and the executive must be firmly established under our constitution. The people who have the responsibility for dispensing justice in our new nation, namely judges and magistrates should be sufficiently secure in their positions so that they can make their decisions without fear of personal repercussions* (CPC Final Report 8/1).

For those who saw some members of the CPC as ‘extreme nationalists’ (see, for example, Downs) it must have come as a surprise that they advocated so strongly the fundamental importance of the rule of law and the entrenchment of the jurisdiction and functions of the judiciary, including the Chief Magistrate, the Public Public Solicitor and the Public Prosecutor, and the protection of their tenure, and terms and conditions of office. The Government and the United Party supported these recommendations which, notwithstanding drafting interventions, were incorporated in the Constitution and have remained there.

There was, however, a reluctance by the Committee to give judges the extent of security of tenure that their counterparts in Australia had (tenure for life or until the attainment of a certain age). It was felt that in a time of rapid social, political and economic change to have judges appointed in their thirties and retain office until they were well into their 60s or even 70s was unwise. The difficulty about this position, however, was that a judge could be replaced by the Government at the end of the 10 year term simply because the Government did not like his/her decisions. This appears to have happened when the first Papua New Guinean Chief Justice, Sir Buri Kidu, who had fulfilled his responsibilities with great skill and integrity, completed his 10 year term. This was a tragedy for the nation and for Sir Buri and his family.

**Autochthony and customary law**

The CPC tried to ensure that the new judicial system, which it emphasised was for the administration of justice, was not unduly burdened by introduced British and Australian common law. It emphasised the importance of developing, through the decisions of judges and the Law Reform Commission, Papua New Guinean underlying law. The recommendation for autochthony emphasised this intention, deliberately making a legal break from pre-independence received law, unlike the situation in Australia, where interpretations of the law are still strongly influenced by received British law, especially in relation to the nature and extent of executive power. While much more might have been done in the past 27 years to develop the country’s underlying law relying on indigenous customary law, the Constitution provides the framework for this complex task in future.

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**CRITCHLEY**

-- just mentioned the fact that the police force was about the right number. He must have been talking about the establishment because when I left PNG in 1978, it was well under establishment. But the size of the police force was not nearly as important as what had happened to the experience, because the police force had been built very largely on experience, and it was falling at such a rate when I got there that my first dispatch was related to it. It had fallen so far when I left in 1978 that my last dispatch to Canberra was about it. In both of them I was able to forecast that there would be law and order problems.

(Q: What could have been done about it?)
Hindsight draft record, 4 April 2003

First of all, we could have tried to stem the fall in the number of experienced officers. The second one, we had to bring in some help with experienced officers who could work with the large numbers of young people who were being brought on, to help them to fit into a police force. We were slow in doing that. We didn’t eventually come round to try and do anything until it had really fallen into disrepair.

OLEWALE

Law and order problems are really of very great concern, but those of us sitting around this table – how many of us realize –somebody said earlier Australia’s lifestyle is described as living in a liberal democracy. A democratic society. A civil society where there is respect for rule of law and justice. Now imagine PNG – some of the people who were living in stone age and then you want to bring them into liberal democracy, as it is in Australia. Very difficult. I don’t know why the Vagrancy Act was taken out of our law. The Vagrancy Act is a big concern now in PNG: people coming and settling in other people’s land. Now this is where, in Port Moresby, Motu people and Koita? people are really being marginalized by people from outside of Central Province. It is becoming a real problem. There will be a big problem in future, if not so soon, in PNG, because of this law and order problem. There is no Vagrancy Act so the police cannot chase people who are settling on other people’s land where they have no right to settle. People just come and settle on Motu Koita? land. It is being taken over by them. The Motu Koita? people are peace loving-people. The influence of the church inculcated into the society last century, in 1800s when the first missionaries arrived along the coast. So people don’t argue when other people who are more aggressive come and settle on their land. Lately in PNG we have been talking about the re-introduction of that Vagrancy Act as a law of our country.

BAYNE

I recall Nick’s work with Bernard in framing those underlying law proposals in the Constitution. They are a splendid part of it. I wanted, just for the historians’ sake, that there was an earlier period of law reform. If you are going to retrace the history of PNG’s modernization up to Independence, the earlier period occurred in the 1960s. If you look at the Statute Book of 61, 62 and 63, you will see a new Corporations Act, a new Co-operatives Act, a new Partnership Act, a Sale of Goods Act, that sort of thing. There was a major period then of laying the basis of Australian commercial law as a basis for economic development in PNG. So that’s a matter for the historical record.

Part of that also, I suspect, was the Derham Report. The Derham Report, as we know, suggested that they re-affirm the principle of Supreme Court – I think there was the District Court in there too – as a professional court, but they plumped for the idea of local courts staffed by trained professionals, albeit at a reasonably low level, which was probably the model that was actually being followed in the African jurisdictions then. In a sense, while people hark back to the African experience, saying why didn’t we do what the British did in Africa and recognize chiefs as sites of judicial power at the local level etc. Interestingly enough, by the early 60s in Africa, they were moving away from that model to professionalising their local courts. That can be seen in that light. But the problem was a ? comment that Toss Barnett made in *Pasin bilong Lo*, that brown book, that if a revolution was ? in the highlands, that if the government did not carry through the form of the court structure, particularly the staffing of local courts with professionally trained people, in a way that would have made it worse. You had the Admin College, you had people like Cox?, Elmo?, Peter Waite?, training people to be local magistrates, but they simply didn’t carry it through. And if they had carried it through, then there might not have been the sort of vacuum that was perceived by the 1970s. Then you had village courts starting up on their own initiative, up at Kainantu, where Barry Holloway and people in that area said that we already had village courts; which, in a sense, forced the hand of the government ? village courts in 1974.

But it is an interesting historical question. In some ways it might be that the problem lay in Hasluck moved out, and the worst thing that could have happened, Ced Barnes moved in. There simply was not an interest anymore, at the Australian government level, in carrying through what one can see, in retrospect, a project of modernization in that area.

NELSON

I am just going to make specific a couple of general observations. One was by Sinclair about the Australian colonial rule
just being so brief. If we think about those parts of the highlands, and they are quite extensive, that only came under effective Australian rule from the late 1940s onwards, then the period of Australian rule is, of course, now less than the period of their independence. The period of independence exceeds the period of Australian rule in quite extensive areas of the highlands. Geoffrey showed us the report on the re-emergence of fighting in the highlands. That report, I think, came out in 1973, taking its evidence from 71-72. What emerges from that report is just the frequency with which the police, in those years, were required to use tear gas, use their guns, list the numbers of people killed, the numbers involved in the rioting, the numbers of houses burnt and so on. An extraordinary degree of that re-emergence of fighting in the highlands when the Australian kiaps are clearly still in control, when there has hardly been any replacement of Australian kiaps by local Papua New Guinean officers. The re-emergence of fighting in the highlands takes place when Australian rule is still at its height.

Putting these two things together … one is the brevity of Australian rule, then the very fact that the re-emergence of highlands fighting is occurring before the replacement of that Australian system of rule. What we can say then about what has happened in extensive parts of the highlands is that it is not really correct to talk about the period of Australian rule, but an Australian interruption, an Australian disruption, of a traditional system. Adult men in the highlands are there when the Australians arrive, they are there and still significant in those communities when the Australians leave.

OLEWALE What do you mean by a period of disruption?
(HANK RESTATES HIS REMARKS)

Peta COLEBATCH
If you are looking at the rule of law, and picking up on Sinclair Dinnen’s point about the traditional mechanisms, my comment is that there is a gender issue in the law. If you look at the violence against women in PNG, and who? in terms of control over resources traditionally, the introduced law had an attempt at an important development of equity. If you look at the abuses which are now occurring under village courts, with women being raped and how that is being mediated through male domination, I think it is a very interesting issue about what voices were there, both leading up to self-government and Independence, about the impact of this traditional law and this notion that the traditional law works for the benefit of women. ? worked for the benefit of men, and what was the role of women then?

DINNEN
There are a lot of people who use this issue of gender equity or lack thereof, I think, to argue for getting rid of village courts, which I think would be very counter-productive. Clearly, under the laws that the village courts are supposed to operate under, a lot of the kind of behaviour that actually goes on is not lawful. A large part of the problem with the village courts – not everywhere, but in some areas – is the absence of supervision which was such an integral part of the architecture of the village courts and how they were going to operate under the Act that set them up. In practice, to me the major problem is the failure to implement the Village Court Act, the fact that the District Court magistrate cannot get out there because of lack of transport or whatever, and do their job as envisaged under the Act. In the absence of that kind of linkage to the more formal regulatory system, it is deeply unfortunate, but perhaps not all that surprising, that village courts in many parts of the country have been colonized by the local power elite who are, invariably, men. So they basically reproduce those kinds of practices. That to me it is a problem of the absence of the linkage as envisaged under the legislation, it is not a problem of village courts per se. If we bear in mind that 95 per cent or thereabouts of all kinds of disputes that are processed in forums that we recognize as courts, are processed in village courts, we really ought to be focusing on that as a significant component of the court system, and again get away from this sort of top-heavy?.

MORRISON
A quick note. In the statement in the House of Representatives on 3 May, where I detailed the transfer of a large number of powers, I pointed out that a matter for which the Australian government is reluctant to continue to accept responsibility is the legal system, apart from the Supreme Court of PNG, and we urged the PNG government to assume
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its responsibility at an early date. The reason why the Supreme Court was not included was that John Momis had asked me not to arrange for the transfer of the responsibility for the Supreme Court. We kept that, but we certainly found it very difficult that somebody located in Canberra to be responsible for the administration of justice, certainly at the village level.

Annette O’NEILL

A trite comment, perhaps. In the last two days there seems to have been a lot of discussion about finance, there has been a lot of discussion about politics, there’s been a lot of discussion about law and order, but there has not been any look at the other side, which is: law and order does not necessarily equate with justice, it does not necessarily equate with comfort, putting police in does not make a more just society. It certainly deals with the consequences, which are social constructs, anyway, and they are a construct which is affected by financial policies that the government is taking. So of course you are going to have problems of squatters, you’re going to have problems relating to urbanization policies – and they are probably not policies, they are probably just processes that have happened because perhaps there have not been policies which had taken in the social effects as well as the economic. If you build mines, you are going to have law and order problems by default, unless you go about establishing and thinking about, with the people, what is going to happen. It does not solve the problem to have a Vagrancy Act, for example. It does not solve the problem to increase the police. All you do is spiral down where you end up like NSW building more jails. There has to be a much more positive thing, and we need to take into account the ? the ?, you’ve got to think of the environment, you’ve got to think of the people, you’ve got to think of the people’s progress and what that really means. Making assumptions about structural things like the legal system, or structural things like improving a flow of money into the country, without thinking about the distribution of that money and who would benefit, and who it costs. That has to be done as well. I am not sure if we did enough of that at the time.

TOLOLO

Law and order is certainly a problem for PNG. One complicating factor is the urbanization, the movement from provinces into Port Moresby, Lae or Rabaul, and because there is no control mechanism put into place, that’s where the problems start. If you look at provincial government, it is controlled by the provincial authorities that have ways in which they can control that law and order, because many of those ?? ?? traditional values is to contribute to control of law and order. You find that village people know what are the wrong and what are the right things to do. Since the village court system was introduced, the village people take part of that control. If we did not move along this direction, you would find that there are more problems in authority.

The other problem that we face now is that traditional or customary values are now diminishing. Our people are now taking what comes, and they do not really know that there is a fight? of values that are introduced into the country. The control by villagers or parents is also diminishing, I’m sorry to say. Because of those changes, you might expect law and order problems. But I think we need to bring it back to the village level, or the provincial level, because they know their people and they can make a lot more contribution towards helping out the law and order problem. There is economic law and order, there is political, and so many things attack them.

The other contributing factor is that I don’t think we are going ?? training of police officers properly, especially the prosecutor. Many cases people have got away with murder, because the police officer does not know how to handle it. In a lot of cases where people knew that Joe Blow was the one who caused the problem, he got away because the police officers who prosecuting did not know how to go about it. Under the aid program, we have embarked on the same problem of prosecutors, we should train our people to get ?. Corruption is also happening among the police. There have been two cases of policemen ? who are in the lock up right now.

WARN

I would just like to mourn the fact that Nahau Rooney did not last longer as Justice Minister and we know why she did not. Had she lasted, she would have been a great model for women in PNG, and some of her qualities in relation to law
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and order, and social issues, were audacious in the extreme. I remember when she banned the advertising of alcohol on sports grounds in PNG, and the breweries kicked up a dreadful stink about that. Nahau’s response was that they did not need any more advertising, they had enough advertising in the hospitals, in the villages, in domestic violence and in the costs they made to the health system of PNG. I think a lot more imagination, a bit more role modeling, a lot more creativity might help deal with some of the problems that Peter has referred to, and Annette, and clearly Ebia and Alkan are worried about it as well. It is not always the fact that a written down law works, but the operation of those laws and the prosecution of those laws is what solves some of the social problems that those laws deal with.

LEY (HARD TO HEAR)

I also want to pay tribute to Nahau Rooney. When Nahau was given nine months jail for her comments about the court injunction about the deportation matter, several of the Australian judges, including the then Chief Justice ?, over her release by the government from custody ?. I know that Hal Wootton was willing to come up to PNG and take over as Chief Justice , at that time when the situation was extremely dire for the PNG government, but eventually Buri Kidu who had been very much involved, in an extremely positive way, in the final discussions on the Constitution, became Chief Justice. He did an outstanding job as the first Papua New Guinean Chief Justice. He observed the rule of law, he enabled some other Papua New Guinean judges to be appointed. He stepped into a very difficult situation, and in this situation Buri Kidu was faced with a legal system that was under fundamental challenge where the Government had undermined the authority of the judges. Buri enabled confidence to be restored and I believe he …

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* Defence Forces.

The Transfer of Defence Powers

Bill Morrison

The two Pacific Island Regiments were part of the fiefdom of the Australian Army and were listed in the Australian Army's Order of Battle. The force had been expanded and upgraded during the confrontation with Indonesia to meet Australia's defence requirements. The Army even had in its planning the raising of a third battalion. The budget was decided and disbursed by the Department of the Army. The House of Assembly, the Administration, the Minister and Department of External Territories were neither advised nor consulted. The two principal barracks were constructed to Australian standards. The PNG officers and men enjoyed a privileged position in relation to the police and other local staff. A culture of elitism had been promoted by the Australian Army personnel.

I was critical of the size, cost and structure of the Pacific Island Regiments which had been based on Australian needs and perceptions. I considered that they were excessive and unsuitable for their likely role in an independent Papua New Guinea. I considered that the funding of the two regiments was at a level that an independent PNG would be unable to afford. Funding was lavish in comparison with other expenditure in PNG. No attempt was made to relate expenditure to overall public finance.

I was also concerned about the Australian Army's ready acceptance of the PIR being a short backstop to the police in the event of civil unrest. Part of the problem was that Australian army personnel played a dominant role in the two regiments and occupied combat positions which could prove an embarrassment to Australia if the regiments were used in aid to the civil power in the event of internal disorder. This was not an academic question. Authorisation had been given in the period of the Gorton Government following disturbances in the Gazelle Peninsula. Fortunately the authorisation was never invoked.

I had discussed my misgivings with my colleague, Lance Barnard, the Minister for Defence, and followed up at a meeting with the Chief Minister, Michael Somare, in Canberra on 18 January 1973. Others present were Lance Barnard, the Administrator, Les Johnson, and the Chairman of the Chiefs of Staff, Admiral Sir Victor Smith.

My view that the police should be strengthened to handle the likely range of internal disorder was accepted. It was also
agreed to consider the establishment of a Police Field Force along the lines of the Malaysian example to carry out patrols and be responsible for the management of the borders. However, the Chairman of the Chief of Staff opposed any reduction in the size of the PIR and interference in the PIR's role in internal security.

The record of how the Australian military ignored the agreements reached at the meeting is contained in Walsh and Munster's Secrets of State, published in 1982, following the banning of a previous book which reproduced the original records and documents.

The end result was that our proposal to reduce the size of the PIR was disregarded. Moreover the Australian military proceeded to institute training for the PIR in riot control - the very antithesis of what we had been seeking to achieve. Regrettably we failed in our responsibility to hand over a viable and appropriate defence force. The problems of the PNGDF were left to the government of an independent PNG which it found difficult to resolve. Despite a report of a Commonwealth panel commissioned by Prime Minister Sir Mekere Morauta, recommending reducing the size of the force and cutting costs by 33%, the minister had to back down in the face of aggressive resistance from the PNGDF. The problem we foresaw persists.

We were able, however, to press ahead on other issues. During 1973, we encouraged the PNG Government to develop its own indigenous staffed foreign affairs and defence department and the appointment of a full-time Minister as the spokesman on foreign affairs and defence. This move was consistent with our approach to hand over defence powers progressively not only before independence but also before self government.

On 9 August 1973, as part of the arrangements for the transfer of powers, I wrote to Mr Somare specifying procedures for consultation on internal security and spelt out the Australian Government's view that the PNG Government should not assume that the PNGDF would be used prior to independence in any particular situation in aid to the civil power. On 20 August the PNG Minister for Defence and Foreign Affairs responded positively by stating that the PNG Government was determined to look after its own security problems and that the PNGDF should only be used as a last resort for the maintenance of internal Security.

Localisation of the PNGDF, especially in combat positions, became a high priority. Bringing about changes in bureaucracies is ponderously slow. In July 1974 out of a force which had blown out to 3851, despite Ministerial instructions to reduce the establishment, there were still 637 Australian personnel. By July 1975 the number had been reduced to 486. When I became Minister for Defence. I was in a position to announce in the 1975 Defence Report that "by December 1975 Australian servicemen will occupy only three combat positions with the two infantry battalions - one company commander and two operation officers".

The collapse of the 1974 timetable for Independence meant that the transfer of defence powers had to be postponed. A new date for the transfer of defence powers was set for December 1974 but at the request of the Chief Minister was deferred. The transfer was accomplished in March 1975 with provisos about the use of Australian personnel in operational situations and the call out provisions of the PNG Defence Act.

On 9 October 1975, as Minister for Defence, I tabled the Interim Defence Arrangements which provided details governing the defence relationship through the early period of independence.

Transfer of the Defence Powers

Peta Colebatch (prepared paper)

Questions on the role of defence forces (and other uniformed forces) draw together critical elements of:

Governance;

Ethics;

Notions of nationality and independence;

Symbolism.
And in reference to Hank Nelson’s comment that no seats in Parliament depended on PNG action, I note that 9 of the 20 Australian VCs in World War 2 were awarded in PNG so this created a climate of awareness and support for PNG, in the 1950s and 1960s. And we should remember also that there were wartime Papuan and New Guinean units also. But my concern here is with five of Bill Morrison’s points:

- PNG could not afford 1st and 2nd Pacific Island Regiments;
- PNG did not need 1st and 2nd PIR;
- PNG should have had a Police Field Force rather than training PIR in riot control;
- Australia failed in its responsibility to hand over a viable and appropriate Defence Force; and
- defence powers were transferred in March 1975 with qualifications regarding aid to the civil power and use of Australian personnel.

1 - Role for defence force:

Could PNG afford not to have a balance in its use of its uniformed forces, given its population size of 2 million (and high birth rates so now 5 million population), logistic difficulties and geographic size. Very few countries that size at that time did not have defence forces;

There was a clear role along the border with West Irian/West Papua;

There was a major question of patrolling its marine borders against smugglers, poachers and maintaining its economic fishing zone;

There had been much discussion about a role for the army in relation to development works in the more remote areas; in one province, all public works was handled by an Australian army engineering unit;

The defence force played a symbolic role and provided representation of nationhood (together with the flag, national anthem, the courts);

It could play a regional role in security, and potential role with UN forces (as Fiji has done, and as it subsequently played in the Pacific in the early years);

The Malayan Field Force was auxiliary to the UK and Australian military during the emergency there – and one could question now whether Malaysia is a model of democratic government!  

In summary, there were a number of roles for the Defence Force before independence. It was first of all important to consider whether there was a role for a Defence Force, before considering costs. PNG was not well able to consider the latter, given the amount of Australian funding, and commitment to ongoing funding. At that time, the Defence Force was (relatively) well disciplined, but no country can afford an ill-disciplined or a badly run Defence Force. Tragically, that is what has transpired.

2. Australia’s major failure

Australia’s major failure was in not developing a civilian department of defence and what it means to have civilian...

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1 During the Malaysian riots in Kuala Lumpur in the late 1960s it is said that one of the units that had shot demonstrators impartially was replaced by a Regiment which shot only those of a particular ethnic group.

2 The subsequent difficulty was that as budgets were cut, the cuts were general, undermining the ability to use the expensive hardware provided by Australia. Soldiers need field exercises, and ongoing testing of field skills. Bored soldiers become dangerous, disruptive and disillusioned with those who consign them to barracks.
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control. This raises issues of governance, elements including transparency, and having a defence force which recognizes the difference between legitimate and illegitimate orders (a notion topical today in Australia).

3. Military force as necessary back-up to civilian control

Military force is always part of government: in PNG there was an armed constabulary, in Australia the Hilton bombing, the US response to 11 September and earlier Kent State. In PNG, 1970 showed the potential need for this role, and Bougainville later if it had remained a limited opposition. This role also brings in proper use of troops in such situations, and the word which I fought to have inserted in the Constitution – “legal” orders – recognised the history elsewhere of improper use of troops, wartime atrocities including My Lai, and the recognition that officers and politicians may not always ‘do the right thing’. [regarding aid to the civil power – I speak as someone sitting in the barracks in 1970 when there was sudden preparation and training in drills for this and preparation of banners in Kuanua saying ‘stop, or I’ll shoot’. ] There is a clear historic use of troops ‘in aid to the civil power’, and troops need to be trained in this role. It is not a symbolic role and in the 1970s, if troops were to be used in this role, it involved the threat of armed force, not a passive display of power to support the police. If the latter role was envisaged, this would need revised training, and, importantly, would blur the lines between the military forces and the civilian (though armed) police forces.

4. Training

Australia handed over a defence force that needed ongoing training. Any uniformed service needs training, education, discipline, and understanding of its role and the limits to its use of force. It also needs an understanding of its relationship with the other arms of government, and other uniformed forces. Australia started preparing very late for the management of its uniformed forces – the early group of officers from Sogeri High created certain imbalances – and also began the preparation very late for what should constitute the defence force: logistics issues of transport, the air wing, and use of the naval patrol boats. The failure to consider logistic requirements also perhaps raised questions about whether Australian officials really wanted to ensure that the PNGDF would be dependant upon Australian support, and the limitations on the use of that support, therefore potentially severely restricting PNG’s ability to use its troops.

5. ‘Transfer’ of defence powers in March 1975

With regard to the claimed transfer in March 1975 – there is a question of whether this could be done at that time in any event, and there is a difference between formal and informal action. Many elements required for transfer were only done at Independence, and even then, the initial Australian legislation only referred to the Pacific Islands Regiment and not the other units including Murray Barracks and other personnel. Moreover, Australia was high handed in its approach, on 15 September presenting a document that excluded its personnel from the jurisdiction of village courts, despite earlier discussions and alleged agreements.

By definition, such significant powers over nationhood could not be transferred before independence. Moreover, the ability to use those troops in armed conflict could really only be actioned after independence, when PNG did not have to

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3 The initial Australian legislation to transfer the defence force to PNG left out much of the PNGDF: it failed to recognize more than 1 and 2 PIR, and perhaps subconsciously illustrated how little Australian officials really considered the needs of the PNGDF.

4 There is also a question in my mind whether Australian-paid defence force officers could properly serve an independent PNG government, given the sensitivity of issues being considered by PNG along the border, in Rabaul and Bougainville, where Australian interests might well differ markedly from PNG interests.
consult Australian authorities on their use (though as noted above, Australia’s failure to fully consider logistics requirements constrained PNG in any event). Any transfer before independence would be informal only and would not allow PNG independence of action in control of its troops in any armed confrontation – the real test of its defence forces.

So in summary – PNG did think through these issues, possibly more than Australians did. For those very concerns which Bill Morrison raised about the cost of the PNGDF, PNG had to think through the role of the Defence Force and its justification. It also attempted to think through the civil/military balance, but Australia had undermined some of this with its late preparation of a civilian Department of Defence, late development of the officer corps, and lack of logistics considerations. But Australian military planners did:

- think about creation of a truly national body, with representation from all areas of PNG and think about career structures, training and discipline. In this it was well ahead of many Australian departments;
- And PNG: thought about issues such as functions of government agencies (well ahead of many Australian departments at that time), did develop the Leadership Code and plethora of other institutional measures which were to help resist corruption and poor governance;
  
  - was far-sighted in its development of guiding principles and its openness and enthusiasm for new ideas, again unlike many Australian States;
  - did have guidelines for NEC submissions, unlike some Australian States;
  - did provide a relatively transparent annual Defence Report in those early years (as judged by Australian civil and military personnel at the time, in comments to me),
  - did provide access to current legislation through its pasted up copies in the Office of the Parliamentary Counsel, something Australian States could not do at that time;

But

What PNG did not recognise sufficiently was the importance of civilian control and the need for ongoing good management, leadership, training and maintenance of discipline for any force that has military might at its disposal. This failure has led to a major waste or resources and personnel, tragedy (in Bougainville), and a threat to good governance and civilian control.

HAY

This is my second actual hindsight intervention. I am the only one here, or anywhere, who actually had the opportunity to use the PNGDF in a police role. Luckily, the circumstances that justified that disappeared over night, and I never had to make a decision. I say that, and I can still agree with Bill Morrison and with the steps that he took, and his team, to make sure that other means are available for the handling of critical internal security forces.

Those of you who have read the Hancock book on John Gorton will find a very detailed description of the circumstances in which the government decided to recommend to the Governor-General that a call out be proclaimed in mid-1970 after Gorton’s visit to Rabaul. It wasn’t something that came out of the blue, because there had been discussions between the Territories department and the Administration and the defence authorities in Canberra about whether police were going to be adequate for critical internal security situations, either in Rabaul or Bougainville, or elsewhere. In those preliminary discussions, the armed services had always taken the line that we do not wish to be involved in this at all. If we’re required to assist the civilian police, then we do it in the way that armed services do it.
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You line them up, issue a proclamation, and if they don’t disperse, then you shoot. Certainly, I myself had a totally different concept of the use of the armed services. Above all, the object of the exercise was not to take any, or endanger, the lives of any civilians at all. The first step in making sure this situation did not arise would be to make sure there were enough police around who were trained and able to handle situations.

There was one case, I think, at Navunaram I think in the 60s, where it was necessary for the police to use force, and they killed some people. That made a very big impression on me, and it also made a very big impression on the then Chief Justice Allen Mann who, in his report on the Navunaram incident, said that the important thing is that you must have enough force – I think he used the words police force – around to make sure people don’t take the risk of defying the law. In the Rabaul area at that time we had a large force of police but we also had a very well organized group, the Mataungans, who had engaged in riotous behaviour and beaten up a lot of people, towards the end of 1969 when the particular ?. So they hadn’t demonstrated their ability to control the situation. My own feeling was that if you had a rifle company, you would not have to use them, but they are a deterrent to people who felt that they might take the law into their own hands and overcome ?. I haven’t discussed the background to this. It was in relation to land occupation which had been arranged by the ? ex-Administration? and was met with resistance by the Mataungans. All I’m saying is that this was ? … (hard to hear) … if there was a situation that involved disputes, they could be there as a threat. That was what I think was very much in Gorton’s mind when he started the proceedings that led to his meeting with the Governor-General and the eventual proclamation of a call out.

So do I regret that the proclamation was made? No. I had, in hindsight, very much a relieved feeling that nobody’s life was at stake, and that for the reasons that they – there were certainly other reasons – the Mataungan group at a critical point they made a gesture of defiance, got an enormous amount of publicity and they dispersed in a good-humoured way, and the incident was closed. But the actual proclamation was not lifted for some months because the situation was still ? bubbling away.

From where we are, I am sorry I was put in the position of having to make the choice, and in the end I did not have to use the army because the situation resolved itself. I always think if it hadn’t happened, I might have had blood on my hands.

Jim NOCKELS

The interesting thing is: God help us if they’d had to go up because they did not have a clue what to do. Having been involved some years later in the call out of the Australian Defence Force following the Hilton bombing, when the Prime Minister of the day, Malcolm Fraser said the Defence Force would be called out, I recall ?, who was then the defence head of the legal area and myself asking, ‘What the eff do we do?’ We went down to the library and found some books about how they did it in British India, and said, ‘We’d better get on with it.’ I mention that as much as anything else to indicate that we were that ill-prepared for the policy side. The ADF was certainly not well prepared, and in fact, as an aside, what they ended up doing after the Hilton ? later, but in the meantime they simply ran a cordon along the road ? sit around looking important and they said that a deterrent.

But getting back to issues in PNG, I think it is worth recalling that there was probably a bigger agenda for the ADF in PNG at the time of self-government and Independence, and that was the very important driving strategic imperative of Indonesia and what was happening in Indonesia, and the potential pressure that Indonesia could bring to bear on Australia, by occupying even more of that large island that hangs to our north, very much to the wet blanket that could descend upon an Australian having attempted to wade from the Australian island of Saibai to the PNG mainland in an attempt to walk across it. It was close enough, I guess, to demonstrate that if many people died from a defence statistic perspective, PNG was a concern. Hence, as Bill mentioned in his paper, the construction and extensive range of quite
sophisticated and highly expensive facility, befitting a defence force that thought it was going to be potentially operating in PNG against possible threats from outside PNG borders, quite some time into the future. I don’t think, since then, Australia has felt that in fitting Murray Barracks with stainless steel down pipes and gutter to last for forty to fifty years – thank God that we did, because the bulk of that structure is still holding up.

But be that as it may, remember this major strategic imperative, therefore the importance of having a defence capability in PNG, which was inter-operable – to use the military term, similar equipment. I recall we even produced a special form of the L1 rifle, which was the standard 7.62 mm weapon. We produced for PNG the L182 which was the slightly shorter weapon, because the stature of many Papua New Guinean members of the PIR did not allow them to effectively operate with the longer L1A1, the Australian variant. The equipment, the training, was identically compatible with Australia’s, as was the maritime and air capabilities, and that, I think, is an important reflection of a perspective in defence bill, that they were there for a hell of a lot longer than anyone else was going to be there, because that was the fundamental driving imperative.

So when Bill raised issues such as field forces, that was not a popular concept. Also, I think we have to remember that in Australia at the time we were about to undergo a major reform of our defence administration structure. Pat? Smith, who was at that meeting, was at that stage, as I recall, a chairman chiefs of staff. Subsequently, his position under the Tang reform, Bill became the chief of the Defence Force committee, ultimately chief of the Defence Force, so in the period of self-government to Independence, you were operating with really three still separate independent institutions of the Australian military – an army who ran the PIR, a navy who ran the boats out of Manus who thought it was a continuation of Australia’s long time war time presence, and the air force who zipped in every now and again to have some nice training in the valleys and do some interesting work in difficult operating conditions.

So to actually bring together this into a comprehensive concept of a PNGDF, to start with, was almost impossible at that early stage. So I think the back-tracking on your agreement was just a reflection of the lack of capacity of anyone to centrally control this amorphous, humungous defence machine at that time. Remembering too, that the nascent defence public service which really didn’t even exist in Canberra, was one of the reasons for the significant deficiency in PNG for quite a number of years later. However much we tried to provide training and background, it was an uphill battle simply because the basic preparation hadn’t occurred. So there is this amazing situation when I arrived on the scene and innocently began suggesting some form of variant of a field force, in the sense that the fundamental high cost, almost unbearable costs for PNG of a defence force of the type of structure that existed at the time, particularly if infrastructure failed, logistic support, headquarters and the like. I do recall being summoned to the office of General Nori, who I affectionately called ‘Jungle Jim’ Nori, who proceeded to tell me that if I didn’t ?seek ?assistance?, sending notes back to Canberra suggesting that we actually might think of something different, and maybe a field force, he would personally have me escorted by some of his men to the aircraft and sent back to Australia. I dutifully pulled in one horn at least. I mention that only because this is part of this infrastructure we talked about and talked about yesterday, inbuilt underlying Australian ?land? that was going to stultifying limits, so much as the work that people around us were involved in, and trying to move forward. There was a number of dead hands and there was a very dead hand in the defence environment.

The subsequent creation of the PNGDF, then, still in this identical Australian model, could only continue to exist on the basis of a drip, and the drip was the defence co-operation program, as Bill well knows, and the drip that I managed for a number of years after I left PNG, a drip that allowed PNG to continue to operate a force sufficiently effective and successful that it was able to be some very great use on Vanuatu.

There was a second point where I had another run at trying to create a field force but was told no – sorry, they did want a defence force and I was somewhat successful in helping them to see that they should have something in between. But
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again, Vanuatu views were similar to those in PNG. Many leading Papua New Guineans at the time felt – Sir Albert Maori Kiki and others – that PNG needed an independent defence force to sustain itself as an independent nation, and of course it had been told by Australia that all independent nations had a defence force, that they had the 27 departments which we recreated perfectly, and in symmetry with Australia’s, regardless of what PNG really needed. I mention this, not so much to comment on many of the other useful? points, but to try and indicate some of the very powerful forces working in Canberra, really hidden from what was going on in PNG, that were the bane of many administrators and others who were, I suppose, creating a situation where it was very, very difficult for those of us who were in Moresby trying to bring about change to allow that to happen. I just add that as an aside perspective to what I think was a very, very interesting and stimulating time.

MATTINGLEY

Bill, your remarks helped to recall in my mind that in the last year of Sir Donald Cleland’s role as Administrator up there, and I’m not sure if it comes from Government policy or not, but J K McCarthy issued a small brochure which was meant to be a discussion paper. It referred to the history of military coups in various countries, and therefore the role of the military in a place like PNG. This annoyed Brigadier Hunter who was in charge of military at the time. He went along to J K McCarthy, requesting that he withdraw this. It would seem to be a stupid kind of an act. But I mention this because, if someone could get a hold of, if they don’t already have, that pamphlet that was issued by J K McCarthy, it would be very interesting.

NELSON

This is just a brief point. What happened to the PNGDF, as is apparent from the last two or three reports into it, is that when those restraints on the budget became long term and more apparent, then what happened was that all of the PNGDF budget was consumed by wages, by basic costs of rations, all those recurrent costs, that meant that there was no money that the PNGDF had for repairs, for training in the field, or patrolling that had been going on, virtually ceases. You have got an army that is almost confined to its barracks and to training that can be done on the parade ground. And it’s an aging force. Now there were two alternatives that were obvious in all this: either that they secured more money, and as ? made clear and as people here would know, there was no chance of PNGDF getting more money in competition with money say for AIDS, for schools, for bridges, or whatever it might be. So that always an aim, and when there were enquiries, there were suggestions how to get more money, but in reality that was an impossibility. The other thing that had to be done was to cut, to really cut, that defence force – the numbers of personnel. But again that was politically extremely difficult, there was likely to be a riot. It wasn’t merely that there were people on the payroll but there was a whole lot of phantom troops by this time also on the payroll that are consuming part of the budget. That has continued right up to now. The alternatives to that is increasing the amount of money or cutting the numbers in the force, which would be extremely difficult. The operation at the moment, Operation ?Kilin Haus?, may be having some success on that one of removing phantom people off the payroll and so on.

But one of the things that we underestimated was simply the impact of poverty on the PNGDF, and the fact of that entire budget being consumed by the recurrent costs, with no money to operate. I’m not sure what the rule of thumb is, but it’s about 60 or 70 per cent of the budget has to be available for the army to operate as an army.

OLEWALE

The current defence commander has just announced that defence force marine element is going to co-operate with our fisheries department to do surveillance because we have so many outside people with their fishing boats poaching on our waters. But this is a good sign that we have this co-operation now between fisheries and the defence force.
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But I am going to mention something that is not connected with this, and it will be remiss of me if I don’t mention that. I left Sogeri High School at the end of 1963 and in 1964 I was enrolled at Port Moresby Teachers College. I became the President of the SRC. The thing that you are discussing here – Australian government changing the rules about payment for the Papua New Guinean public servants – that came about while I was at Teachers College. The announcement was made on 9 September 1964 and then I heard it on the ABC news in Port Moresby, but luckily there were lecturers from Australia who gave me advance information that this was going to happen, so I was ready to do whatever I could to help our students. We planned on the night of 9 September to march on Konedobu. On 10 September it was our practice teaching day. We didn’t go out – I called the principals of where all of us were going teaching. I stood up in the mess where we had our breakfast, and I said, ‘All of you want to go practice teaching?’ and they said, ‘No, we are going down to Konedobu to talk to the Administrator and the Education Department.’ So that is what we did. Those of you who know Port Moresby Teachers College, was right out in Moore? Street and it was all bush. There was only one road to Hohola, Murray Barracks down to Konedobu. So we all marched. At that time, we had already established the Tertiary Students Federation and I asked students from other colleges, like Admin College, where Michael Somare and Albert Maori Kiki were, from Posts and Telegraphs and from PNG Medical College to come along with us but they retracted because they were already public servants and they were being paid, and they would be sacked if they marched with us. I was still a student. So we marched on Konedobu. We reached there and all the press came. Dr Gunther met us in the conference room and the Director of Education came, and they assured me that yes, they were going to review your case, all of you who have marched and more Papua New Guinean students.

In 1965 the Tertiary Students Federation moved a resolution that I should go and visit all the tertiary colleges there, in Bulolo, Rabaul, Vudal, Holy Spirit Seminar in Madang. I had no money then. I went to Dr Gunther. Dr Gunther, he must have discussed it with Sir Donald Cleland, they gave me a ticket and accommodation warrants. Now that was the beginning of my political career, in fact. The other thing I’d like to mention is that there were Australian students, university students who already felt interest in advancing the start of a university in PNG. I’d just like to tell you that I had two good friends who came up in 1964 in those university student days. One is Patti Warn here, and another friend had just visited me – Cameron Martin sitting there. They helped PNG students to talk with government that yes, university was necessary for the advancement of PNG. Thank you.

STONE

I think we all appreciate the frankness of Bill Morrison’s argument on the transfer of defence powers. I must say I was rather astonished to hear his account of the defiance by the military of what appeared to be decisions made at ministerial level. The question that comes to mind is how this situation continued and why it didn’t hit the Cabinet, and why it failed to be resolved by a Cabinet decision.

DABB (HARD TO HEAR)

Just a quick word on this mysterious concept of aid to the federal power. Two things become confused. One is the circumstances in which you are allowed to use your army for a civil purpose. That’s one issue. In 1970 there was some sort of vague common law theory ? a proclamation from the Governor-General to allow this to be done. After the Hilton bombing was analysed by Justice Hope in a report which showed that the ? could do it like that, it wasn’t on a statutory basis, but the difficulty was that you certainly had the extra powers for the defence force to be called out. It had no greater powers to affect anyone than an ordinary citizen would have. This was extremely troubling for the defence force. I won’t go into how this was dealt with in Australia ? ? but in PNG they actually got a bit ahead of Australia in the Constitution, and in Section 204 that dealt with call out, they said, okay yes, there were statutory procedures for calling out the defence force, and the defence force does not have the ? to be given greater powers than the police, which was a reasonable sort of benchmark. Leaving it there, what that does is take care of the authorizing of use of the
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defence force. It doesn’t ? ? power, like that. So that ? out of the question of what legislation is enacted separately in the
nature of emergency powers legislation which, of course, includes power like cordonning areas, not allowing people to
go into certain areas, stop and search, ? ?. It was like the distinction between call out and what a defence may do in
relation to a call out and what those powers ? ?.

MORRISON

Why it wasn’t discussed in Cabinet? This was a relatively small issue in terms of what was coming up in the Defence
Department. It was part of Labor Party policy to abolish the departments of army, navy, air and supply and create a
Department of Defence, then the Minister for Defence was in charge of the whole of the defence establishment. I wasn’t
the Minister for Defence. My colleague Lance Barnard’s time was taken up in great detail on the subject of the re-
organisation. In fact, it was still going when I became Minister for Defence, the final stages of the re-organisation. It
took quite some time. It wasn’t a matter that I considered important, but at that stage I was a relatively new minister and
my word didn’t go, and then Lance got preoccupied with these other subjects.

Now to Hank’s comment. It was quite right. There is always going to be this problem of adjudicating on the size and the
amount of money that is being used. There’s a lot of dissatisfaction with the PNGDF in PNG now. I think that the
former Prime Minister, he sought the advice of the British Commonwealth group after an incident involving the ill-
disciplined actions of some of the troops. These are the sort of problems you could foresee – you didn’t have to be a
rocket scientist to see the problems that PNG was going to have. Back to Peter’s comment, we did continue training. I
can recall in 97 the 1975-76 budget, for which I was responsible in the defence area, that there was over $30 million
devoted to military defence aid to PNG. We did continue training – the engineers, the defence assistants/ce? group –
they’d had the surveys, the support … (GETTING HELP IN REMEMBERING FROM SOMEONE ELSE) … We left a lot of
groups in PNG as part of the Australian Defence Assistance Group.

I go back to Sir David’s comment. I was well aware of the circumstances of the call out for the Gazelle Peninsula. I had
a reticence about – I certainly wanted to make any call out as complicated, as difficult as possible, because there is a
ready assumption, and there was the ready assumption, in the thinking, the philosophy, of the PIR that they were a very
easy backstop, a short backstop, to the police. So that is why I was particularly interested in developing the police, and
to use the saving by reducing the size of the PIR to fund the police. This is all old hat now because I never got what I
wanted, and this sometimes happens in politics. I saw a task force which would have a fairly strong maritime and aerial
survey, because I saw, as Ebia mentioned, the difficulties that would be associated with ? fishing, protecting the borders
in that sense. The 2PIRs weren’t really being involved in it because Manus was being run by the Australian navy, not by
the 2 PIR. I was very concerned about it, and I did not get my way. That’s one of the regrets that I have – this is one
confessional that I can say – and to this day I regret that we didn’t hand over to the PNG government a viable defence
force for their purposes.

A Short Guide to the Torres Strait Compromise

Geoff Dabb (prepared paper)

In government offices in Konedobu, Waigani or further afield, maps always hung, or were stuck on, the walls. Usually
there would be a map of Papua (and) New Guinea. On this would be a bit down the bottom labelled ‘Australia’. If the
eye went there, it could not fail to note a dashed line running up the outside of the Great Barrier Reef and enclosing
nearly all of the sea area known as Torres Strait, even appearing to brush the mainland of Papua. This, to most people,
was ‘the border’.

Much of the concern about ‘the border’, among those Papua New Guineans who were concerned, probably derived from
the impression conveyed by those maps. It looked as if Australia had unfairly grabbed the whole sea almost to the PNG coast. Moreover, any resident of the nearby Papuan coast would, it seemed, not be able to go more than a few hundred metres without being in Australia, if indeed he/she was allowed to go that far.

In reality, the dashed line was not intended to indicate that any sea areas were part of Australia; it only indicated that certain islands were part of Australia. If there had been immediate general acceptance that the relevant islands were and would remain part of Australia, there would still have been a need for a division of sea and seabed areas that would have been less difficult, although still calling for imagination.

As it happened, the issue of the status of the islands had to be addressed as well. This was done in negotiations from 1972 to 1978, leading to the package of compromises underlying the instrument known as the Torres Strait Treaty.

If the status of all the islands had not been thoroughly probed, this would have made the journey to a compromise less complete, and, I think, less comfortable for those who had to endorse the result.

On the map, and in the census book

Sea distances are usually reckoned in nautical miles (of 1852 metres, as against 1609 metres for a statute mile). The closest distance between the PNG and Australian mainlands is about 80 nautical miles (about 150 km). In 1972, several (presumed) Australian islands lay close to the PNG coast. At high tide, the nearest (Kussa) was less than one kilometre distant. At extreme low tide the distance was anyone’s guess, but in the vicinity of Kawa it could have been about 300m. The high-tide distance from PNG of the nearest inhabited island (Boigu) was about 5 km.

A moment’s reflection should make it plain that there is no necessary incongruity or injustice about islands of State A lying close to the coast of State B. If State A had a common land border (the usual kind) with State B, there would be no separation at all, no no-person’s area of sea or other divider. PNG is closer to Indonesia than it was ever likely to be, territorially, to Australia.

In 1973, some population figures were tabled by Australia, and were taken to represent the approximate state of affairs through the subsequent negotiations, on the understanding that variations could occur over quite short periods. The islands population in Torres Strait was about 5,000, of whom nearly 700 lived on Boigu, Saibai and Dauan close to the PNG coast. Torres Strait islanders living on the Australian mainland amounted to a further 5,000-8,000. No such precise count was made of the residents of PNG with traditional links to areas of the strait, but PNG suggested that the number was about 20,000.

The islands

A succinct historical account of how the islands became part of Australia may be found in Paul van der Veur’s *Search for New Guinea’s Boundaries*. In 1879 they were incorporated into the colony of Queensland as a result of Queensland’s desire to see the dominion of the British crown extended as far north as possible, Papua not then being a British possession. Throughout Australia’s administration of PNG, the islands were within the statutory definition of Queensland and excluded from that of Papua.

The PNG case for a transfer of at least some islands could be put in various ways.

(a) The unfinished business argument. The acquisition of Papua in 1884 removed the rationale for the extreme northward extension of Queensland, with its attendant administrative difficulties. Before the end of the century, even Queensland had agreed that the ‘close-in’ islands of Boigu, Saibai and Dauan should be transferred to the new possession. However, that action had not been taken by federation, leaving the Lieutenant Governor of British New Guinea to complain (as quoted by van der Veur):
that ‘the long unfulfilled promise of the Queensland government’ had not yet come about and that the matter still stood as ‘an inequitable, arbitrary and purely unnecessary injustice to the Possession’.

(b) The link between the islands and the broader question of sea and seabed jurisdiction. Torres Strait waters are shallow, with many islands spread across them. No-one could be sure of how many islands there were, technically speaking. Some claimed Australian islands (eg East and Anchor Cays) were said to be ‘awash at high tide’, and therefore not islands at all in the legal sense. Elsewhere were large up-flung coral boulders and sand cays of uncertain permanence, but possibly technical islands and a basis for claimed individual belts of 12-mile territorial sea, as a natural incident of sovereignty. To avoid such complications, PNG proposed a new boundary line that would be ‘all purpose’, determining sovereignty over islands, sea and seabed.

(c) The need for a reasonable adjustment of territory on PNG independence. PNG had had no say in the actions of others that had determined its pre-independence boundaries. There were precedents for adjustments of boundaries on the emergence of new states. Australia itself had inherited most of its external territories (eg Christmas and Cocos Islands, Coral Sea Islands) by transfer from the United Kingdom after federation. Similarly, one remote islet in the Coral Sea (Pocklington Reef Island) was proposed for transfer by Australia to PNG. There were also precedents for differences of opinion over boundaries to fester for many years. While Australia could refuse to transfer any islands, PNG could not be obliged to accept such a refusal as fair and reasonable.

A difficulty in the way of transfer of any Queensland islands was the Australian constitution. Such a surrender of territory would require either the consent of Queensland or a national referendum. Outside the constitution, a possibility that might have been explored was recourse to the United Kingdom government to alter the boundaries of Australia, as had been considered by Attorney-General Isaacs in 1906. Of those possibilities, persuading Queensland seemed the most realistic. True, this might have required a hefty quid pro quo, but that, in the view of PNG, would have been a matter for the Commonwealth.

However, a formidable obstacle to the transfer of any inhabited islands was the islanders themselves. Without their agreement, which was unlikely, it was difficult to conceive their either being transferred to PNG along with their islands or being evicted.

In March 1974, after detailed exchanges of views through talks and correspondence, PNG foreign minister Albert Maori Kiki wrote to his Australian counterpart putting PNG’s position on a single all-purpose boundary line. He said Australia ‘should at least transfer the uninhabited islands north of the boundary line’ to PNG. That position by implication accepted that the inhabited close-in islands of Boigu, Saibai and Dauan would be Australian enclaves north of the proposed sea/seabed line.

Progress was slow over the next two years. PNG was preparing for independence, and relations were strained between the Commonwealth (Whitlam) and the Queensland (Bjelke-Petersen) governments. Soon after PNG independence, the Queensland position was set out in the premier’s statement to parliament on 7 October 1975, and the Commonwealth position, in response, in a lengthy statement to parliament by Prime Minister Whitlam on 9 October 1975. Andrew Peacock, shadow foreign minister and former territories minister, responded to the latter statement referring to the boundary issue as a ‘festering problem’, ‘probably’ to be ‘the greatest dispute between ourselves and our closest neighbour’.

It was not surprising, therefore, that the Fraser government returned to the issue with a sense of urgency. In early 1976, Australian ministers told PNG that Australia was prepared to negotiate ‘some revision of present arrangements in Torres Strait’, that a seabed boundary could be expected to run to the south of Boigu, Saibai and Dauan, but that ‘the Australian position was that no Australian islands would be transferred to Papua New Guinea’. At ministerial talks in
May 1976, Australian retention of the inhabited islands was agreed, subject to their territorial sea being limited to no more than 3 miles, and to agreement on other parts of the package.

The uninhabited islands, small and uninhabitable, but of importance because of their uncertain total number and effect on sea delimitation, were a separate matter. A strong part of the PNG argument was the glaring anomaly of the very close-in mud-and-mangrove islets of Kawa, Mata Kawa and Kussa. However, as to these, officials of both sides had noted to one another in 1973 that there was uncertainty about just what was or was not caught by the 1878 line. That issue was resolved by a remarkable feat of research by the Australian Attorney-General’s Department that led convincingly to the conclusion that the three troublesome islets were not caught by the line and hence had all along been part of Papua and not Queensland. (‘Status of the Islands of Kawa, Mata Kawa, and Kussa’, published in 1978 in the Parliamentary Papers series.)

In the result, when the seabed line was negotiated, only 9 uninhabited Queensland islets were identified by Australia as lying to the north of it. PNG ministers were able to accept that situation as part of the overall package.

The sea and seabed boundaries

The 1972-1978 negotiations took place against the background of the developing law of the sea and parallels to Torres Strait, although generally less complex, in marine delimitation situations in various parts of the world. Under previous policy (applied also to PNG), Australia had already claimed:

- a 3-mile territorial sea measured from unspecified coastal baselines;
- a fisheries zone out to 12 miles from the same baselines;
- ‘continental shelf’ jurisdiction (over minerals, petroleum and sea-floor fisheries) extending over relatively shallow areas of contiguous seabed, as in the Arafura Sea and Torres Strait.

Under the new law of the sea:

- a 12-mile territorial sea was likely to become standard;
- coastal-state jurisdiction could be exercised over fisheries in an ‘exclusive economic zone’ that could extend 188 miles, sometimes more, from the outer territorial sea limit;
- the coastal state could exercise a range of controls in the 188-mile zone over pollution, structures, shipping, and some other activities.
- delimitation between overlapping sea and seabed areas of adjoining or opposite countries was to be effected by agreement, with the possibility of recourse to other dispute settlement procedures in the absence of agreement.

This meant that on PNG independence a sea and seabed boundary, in a practical and legal sense, had to be established for the first time. There was no ‘existing boundary’, for this purpose except an incongruous seabed line specified in Australian legislation for the purpose of allocating functions and benefits between Australian states and territories with respect to offshore petroleum and minerals. In the north of Torres Strait this purported, rather crudely, to follow the 1878 line. However, that line had no more authority against an independent PNG than a line unilaterally drawn by Australia would have had against Indonesia, and Australia at no stage suggested that it did have such authority.

Both Australian and Papua New Guinea advisers were participating actively in the 3rd UN Law of the Sea Conference (UNCLUS). They had worked together in the negotiation of respective boundaries with Indonesia. In 1972, although political decisions about the islands till needed to be made, they were well aware of the complexities and challenges
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waiting to be faced in establishing sea and seabed boundaries between PNG and Australia.

In all differences over marine delimitation between states with opposite coasts, one side would favour a ‘median line’, one of the recognised bases for fixing a boundary. The side not favoured by a median line, would invoke another basis, the existence of ‘special circumstances’ calling for a departure from a median line. The most common ‘special circumstances’ situation was where one or more islands of State A lay close to State B. The exhausting debates on delimitation principles at UNCLOS were an endless ping-pong game between State As and State Bs.

In Torres Strait the resolution of a sea/seabed boundary was linked, but not necessarily decisively linked, to the issue of sovereignty over islands. It was a matter of the influence, if any, to be given to particular islands. In 1974, PNG presented for discussion two possible lines: one, the ‘mainland median line’ and PNG’s starting position, was drawn by giving full weight to the respective mainlands but disregarding all islands; the second, the ‘modified median line’, was drawn giving full weight only to those Australian islands closer to the Australian mainland than to the PNG mainland ie disregarding those Australian islands that were closer to PNG.

When negotiations resumed in 1976, between the Fraser and Somare governments, Australia was prepared, as the next step, to negotiate a seabed line to the south of Boigu, Saibai and Dauan. A small group of officials met in July and August 1976 and agreed to recommend a line (the August 1976 line) that was virtually the same as the ultimately agreed seabed boundary. This is not the place to discuss all the factors relevant to the run of that line, but it might be noted that:

< It traversed the whole distance between end-points where Indonesian jurisdiction was engaged in the west and Solomons jurisdiction in the Coral Sea to the east;
< In the strait, it split the Warrior Reefs, a shallow area of interest to both sides;
< In the Coral Sea it gave about half weight to Australian islets (PNG accepting this in light of the Forum countries’ position that such islets qualified for full EEZs, and in the expectation that PNG would similarly use its newly-acquired Pocklington Reef Island in relation to the Solomons boundary).

Foreign ministers endorsed the recommended line in August 1976, with the express proviso on the Australian side that it was only endorsed for seabed purposes and was subject to agreement on the rest of the Torres Strait settlement. At that point, the two main unresolved issues were the status of uninhabited islands north of the line and whether that line or some variation of it would be the boundary for sea, as distinct from seabed, purposes.

There followed a period of slow progress, punctuated by the most confrontational moment in the road to the treaty. This was when the Somare government, becoming understandably impatient as the post-independence clock ticked away with Australian jurisdiction still asserted on paper up to the PNG coast, proposed to introduce its own marine-jurisdiction legislation that would have foreshadowed, but not actually asserted, overlapping jurisdiction in the strait. The reaction of Australian ministers was brutally sharp and PNG was persuaded to exercise restraint, but the episode gave a strong incentive to both governments to address the remaining difficulties standing in the way of the treaty. (Later, in the 80s, Indonesia was to make a much more dramatic assertion of overlapping jurisdiction in its own push towards a fisheries boundary agreement with Australia.)

The Olewale/Peacock statement of February 1978 announced that ‘after a period of suspension during the time of the PNG and Australian elections, substantive negotiations on all issues relating to Torres Strait would be resumed forthwith…’. The following months saw intensive negotiations, with the signing of the treaty in December.

The remaining jurisdictional issues were resolved as follows.
The position of PNG on the uninhabited islands was partly a last echo, reluctantly abandoned, of the old complaints originally made by British New Guinea, its predecessor in title so to speak, for a readjustment of the 1878 sovereignty line. However, its main concern was that under the international baseline rules the islands and even associated ‘low-tide elevations’ could be used to generate large areas of Australian territorial sea where PNG seabed jurisdiction (and any sea jurisdiction) would be ousted. This concern was addressed by agreement on what features, definitively, would be regarded as islands for that purpose, and the setting down for the future of what the territorial sea limits would be, on the basis of only a 3-mile breadth. With mapping technology then available, it was possible to calculate those limits with an accuracy of 25 metres. This is why the treaty devotes so much paper to describing and illustrating the sea limits of 9 small uninhabited islets.

Australia did not want, on the map, a solid black line below Boigu, Saibai and Dauan with the misleading appearance of a drastically relocated ‘border’.

The agreed solution was that a ‘sea’ (fisheries) line would diverge northwards from the seabed line and form an embracing ‘hat’ around those three islands.

As an inducement to PNG to agree to the excision of the 9 islands, with 3-mile belts, and to the ‘hat’, Peacock proposed to PNG ministers a sharing of the commercial fisheries resources of the strait, tied to the proposed ‘protected zone’.

Within the zone, each country would allow the other access to one quarter of the resources on its side of the line, with PNG to have half the resources of the northern ‘enclave’ islets. Australia stressed the higher value of the fish stocks on its side of the line. That proposal depended on adherence in good faith to the UNCLOS concept of ‘optimum sustainable yield’, which had been developed to guarantee access by foreign fishermen to genuinely excess resources not to be left at the unfettered discretion of a coastal state. The Peacock proposal had considerable attraction to a PNG government anxious to foster the development of a PNG-based fishing industry aimed at the resources of the strait.

With agreement on the above points, the jurisdictional issues were settled, but the package still depended on an exchange of undertakings on other matters.

The protected zone and rights of the traditional inhabitants

The protected zone regime was laid over the various lines of delimitation in the strait. This guaranteed traditional freedom of movement and exercise of other traditional rights. Such arrangements are not unusual in relation to international boundaries; PNG had its own ‘border arrangements’ treaty with Indonesia. What was unusual in relation to Torres Strait was that the traditional rights regime was an integral part of the boundary treaty itself and locked to all its other elements. Australia had insisted on that position, so as to be better able to show the advantages of the treaty package to the islanders. In a sense, the zone was a more developed and practical version of the ‘marine park’ proposal that had been favoured by Queensland.

PNG also saw advantage in the regime, provided it did not unduly restrict, as a ‘park’ might have suggested, commercial use of the resources. (Without making unkind imputation about the islanders’ access to Australian services and welfare benefits, the PNG traditional inhabitant’s only income, by contrast, was likely to come from use of natural resources, either directly or as employed labour.) By 1978, PNG could hardly have failed to be aware of the importance of the islanders’ wishes in the treaty development process. Moreover, it was quite possible that more PNG traditional inhabitants than Australian ones would benefit from the regime. Qualifying inhabitants only needed to live ‘in the vicinity’ of the zone, not within it, and the zone area, a smorgasbord of seafood if the maps were to be believed, was
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much more extensive on the Australian side of the sea and seabed lines.

This writer is not qualified to say whether any local inhabitants on either side were or are unhappy with any aspect of the treaty. Like all boundary arrangements, it is necessarily a blunt instrument, although intended to be made flexible, and responsive to the needs of those affected by it, through built-in liaison and consultation measures. However, some response might be made to the suggestion that the treaty-makers insensitively over-rote a pre-existing, well-recognised traditional boundary.

The claim that there was such a traditional boundary appears in James Griffin’s 1977 article, which draws in that respect on the views of Peter English. English was told by the local inhabitants that traditional boundary points were already recognised in the form of two specific low-tide elevations, between, respectively, Saibai and Boigu, and the Papuan coast. In fact, considerable efforts were made for the purpose of the negotiations to determine patterns of traditional uses of the area. These led to reports of patterns of non-exclusive fishing, including by Papuans right around the three inhabited islands. Sometimes this was said to be pursuant to a ‘traditional right’, perhaps belonging to one Papuan village but not others. With a history of cross-boundary uses, even entitlements, one wonders what followed from ‘recognition’ of a ‘boundary’ in a particular place and whether this was in truth recognition of a right to exclude others.

Definitive, treaty-based marine delimitation, as found necessary elsewhere, was needed to provide the means to control entry and use not by traditional inhabitants but by third parties, including (in this case) ‘foreign’ Australians and Papua New Guineans. Moreover, there were real questions whether traditional understandings about uses of the areas in question, if they existed, could, by their internal logic, even apply to, let alone be effective to control, serious commercial exploitation with modern equipment, either by local inhabitants or outsiders.

The advice to the negotiators was that sea areas near the inhabited coastal areas held resources sufficient for subsistence or ceremonial needs without going much further afield. More remote, occasionally visited, areas were another matter again. These included areas such as Bramble Cay and the Warrior Reefs, areas difficult to reach and exploit by traditional methods. Traditional use would have been occasional but surely non-exclusive; patterns of more frequent use with powered vessels were developing, but hardly traditional. To base definitive ‘ownership’ and hence sovereignty of sea areas primarily on ‘use’ could only open the door to a host of competing claims. Quite sufficient of these were heard to convince any responsible treaty-maker of the grave danger of attempting to draw a sovereignty line by a process of adjudication between them. More than one group can use an area, particularly in a time span from the beginning of legend until the present moment. The protected zone concept at once preserved the area for the free play and interplay of current understandings about traditional rights and practices (see Article 12), and allowed for the exclusion or regulation of non-traditional uses by appropriate national authorities.

Apart from relevance or non-relevance to delimitation, the matter of traditional rights touches on another issue. The treaty was, of course, pre-Mabo. That case was a watershed only in Australia. In PNG traditional proprietary rights had the force of law, and indeed were the foundation of the land tenure system. However, the recognition of proprietary rights in sea areas beyond ‘internal waters’, that is beyond the limits of the state, would have broken new ground for both systems. Whether such rights are recognised is a matter for the legal system of the relevant country; it is a matter for PNG whether it recognises land rights in PNG of inhabitants of Indonesia. In Torres Strait, Article 12 is broad enough to call for recognition of cross-border proprietary sea rights where capable of recognition under respective national systems.

As an aside, the claimants’ early pleadings in the Mabo case actually invoked the Torres Strait treaty as an instance of recognition of the traditional rights that were in issue in that case.

All this, of course, made for a fairly complicated treaty, far removed from the single boundary line originally favoured
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by PNG. As a result of that complexity, the treaty, signed on 18 December 1978, did not enter into force until 15 February 1985.

Griffin also made many several criticisms of the treaty process and of the role in it of almost everyone except the traditional inhabitants. These are no more worth responding to now than they were then, but one point may be relevant. He referred to PNG reliance on ‘Australian lawyers’:

... it seems to me unfortunate that the parameters of what is possible and the limits that might be set to PNG’s ambitions are not being conceptualised by PNG nationals, particularly after making themselves familiar with Torres Strait Islanders in their own habitat.

In fact all significant decisions on the PNG side were made by nationals; PNG ministers had more of an eye to the needs of future generations and less for the expedience of the moment than I would expect in the average Australian minister; and Ebia Olewale was entitled to be annoyed at any suggestion that he was unfamiliar with Torres Strait Islanders in their own habitat.]

A post-script or two

Even given agreement on substance, the final treaty text took several weeks of concentrated, even feverish, work to refine and edit. It was a technical document, in which one changed word or numeral could have made a large difference to the effect of a provision whose balance had taken months of bilateral labours to achieve. When all was done, Tony Siaguru and I sent our personal souvenir copies to Canberra in the hope of obtaining Fraser and Peacock signatures alongside those of Somare and Olewale. We are told that the Peacock pen hesitated over the dotted line. ‘Can we be sure that this isn’t some kind of trick?’ he wanted to know.

Much later in Canberra, I was discussing the treaty’s fisheries provisions with the new head of the fisheries division in the primary industry department. I referred to the treaty’s guarantee to PNG of a share of Australian fish resources. Having attended an international forum or two, the relatively new head scoffed that ‘optimum sustainable yield’ was an illusion, and would mean no fish at all if Australia thought that that determination served its interests. Such an Australian position, in my view, would have been not only unsustainable but, given the negotiating history, tainted by bad faith; the incident does demonstrate that treaties must be written to be read by persons with a different cast of mind from the authors. Carefully drafted treaties make good neighbours.

Finally, there is the durability of that dashed – or dotted – black line. Some people just want that line as ‘the border’ without explanation or qualification. The National Museum of Australia has an extensive display on Torres Strait Islanders. This includes a large map, showing the areas of Australia and PNG, marked by a single black dotted line. Unbelievably, the line runs between the PNG mainland and the islands of Kawa, Mata Kawa and Kussa.