

Chapter 8

Creating a Constitution

Keen to decolonise Australia, Whitlam assured Somare that he endorsed the timetable that would confer self-government on December 1, 1973, and independence as early as 1974. He allowed little latitude in the timing, and none in the shape of independence. His policy speech ('It's Time') made 'a secure, united and friendly Papua New Guinea' a priority, an outcome essential to regional stability and Australia's fulfilment of the UN Trust. Twice in 1972, the UN General Assembly reaffirmed the need for unity and policies for 'discouraging separatist movements and promoting national unity'.¹

Whitlam's government believed that speed was essential. Given enough time, the United Party might wean members of the coalition away from Somare and arrest the momentum to decolonise, or the forces of secession might rally. Whitlam laid it on the line: '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.'² Haste was needed too, lest Australia find itself responsible for the actions of a government that it did not control. Morrison expected to have to prod Papua New Guinea's leaders, if they proved as stodgy as their predecessors. So a firm and short deadline was vital, and Somare's colleagues agreed, at least in principle (Chapter 7). A willing decoloniser was dealing with a willing successor. Surely nothing could impede the smooth and swift transfer of powers.

The Constitutional Planning Committee

But Papua New Guinea's peculiarities threatened this scenario. Apart from the need to create institutions from scratch (Chapters 9 and 10), the people had to be consulted and coaxed to accept citizenship in a nation-state. Then a turbulent parliament had to adopt a constitution; and the UN had to approve the processes of decolonisation.

Somare's team recognised that popular opposition, or even apathy, would jeopardise independence: a powerful Constitutional Planning Committee was essential to garner support. Somare was already alert (Chapter 7) to the risk of merely acting out Australia's scenario. According to the neat summary of his adviser, Tony Voutas,

Suspicion that Australia would make all its constitutional decisions for it and continue to set the pace was a significant element behind ... the setting up of the

Constitutional Planning Committee. Such a Committee would, it was hoped, more than counterbalance Canberra's planning and enable the PNG Government to establish its own priorities.³

As the CPC delved deeper, its members would demand more time. Whitlam and Morrison remained convinced that delay would jeopardise unity and decolonisation. And these rival visions were projected with increasing acrimony onto Papua New Guinea's government.

Somare proposed a committee of 15 respected parliamentarians:

Michael Somare, Chair ex officio	East Sepik	Pangu
Father John Momis, Deputy Chair	Bougainville	Pangu
Toni Ila	Lae	Pangu
Pikah Kasau	Manus	Pangu
Tei Abal	Wabag	United Party
Deputy Leader of the Opposition, promoted Leader, succeeded by:		
Anton Parao	Western Highlands	United Party
Angmai Bilas	Madang	United Party
Mackenzie Daudi	Northern	United Party
Sinake Giregire	Daulo	United Party
Matiabe Yuwi	Tari-Komo	United Party
Paul Langro	West Sepik	United Party
John Kaupa	Chuave	National Party
Paulus Arek	Ijivitari	People's Progress Party
Minister for Information, died, succeeded by:		
Boyamo Sali	Morobe	People's Progress Party
Stanis Toliman	Bogia	People's Progress Party
John Guise, Deputy Chief Minister	Alotau	Independent
John Kaputin, Minister of Justice	Rabaul	Mataungan

Arek's successor, Boyamo Sali, did not attend meetings, but Abal's successor, Anton Parao, became an active member. The selection of Momis as de facto chair reflected not only his reputation for articulate intelligence and integrity, but the pivotal importance of his Bougainville constituents. As a seminarian and priest, he was steeped in Bougainville's struggles with the mining company and the radical ideas of Paulo Freire gave him the language for his populism. The inclusion of four ministers underlined the CPC's crucial role, though two played little part in debates. The membership combined regional and party balance with personal distinction.

Cabinet appointed three full-time and several part-time consultants. The Kenyan political scientist Ali Mazrui declined his invitation. The most senior consultant was Jim Davidson, New Zealander by birth, Professor of Pacific History at the ANU and adviser to Samoa's constitution-makers. His protégé, David Stone, had analysed the Cook Islands Constitution before he joined the New Guinea Research Unit to study politics.

The Australian Ted Wolfers was the most experienced analyst of local politics. John Ley joined as counsel to the House of Assembly and he was joined later by Peter Bayne. All counted Papua New Guinean politicians among their friends; none identified with the Australian Government and most regarded Morrison — if not Whitlam — with suspicion verging on hostility. Seeing no indigenous advisers, the CPC selected the lawyer Bernard Narokobi. They were also advised by the Tanzanian Yash Ghai, Ronald Watts from Canada, Bill Tordoff of Manchester and Nigel Oram of the UPNG.

A clarifying crisis blew up in March 1973, when Mathias ToLiman, as Leader of the Opposition, accused the CPC of being the Government's rubber stamp. He told his (surprised) colleagues that they would be boycotting meetings until their demands were met. Evidently, he felt isolated from the CPC, some United Party members feared the radical influence of the CPC's consultants, and Tei Abal wanted more staff and facilities. After lengthy negotiations, ToLiman was promised regular briefings and Abal was allowed more facilities. Consultants were told (in Momis's neat phrase) to be 'on tap, not on top'. And Davidson's untimely death removed the consultant with the highest public profile.

That was the last time anyone accused the CPC of subservience. While the Government considered speed to be more important than perfection, the CPC came to see a constitution as a shield against all ills: it would set national goals, guide efforts to achieve them, guarantee rights and freedoms, prevent abuses of power and ensure local autonomy. Members began to talk of nation-building, which they saw as their own domain. 'True nation-building', they insisted, '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.'⁴

They reckoned that independence provided a chance to define:

the philosophy of life by which we want to live and the social and economic goals we want to achieve. If the constitution is to be truly the fundamental charter of our society and the basis of legitimate authority it should be an instrument which helps achieve these goals ... The constitution should look towards the future and act as an accelerator in the process of development, not as a brake.

There was a whiff of utopianism in Narokobi's dream of overthrowing the State in favour of a confederation of villages:

The rural wanples [communities] would be small democratic republics, like interpenetrating circles with common areas of culture and civilisation. They would work in cooperation ...

At the same time, cities should re-organise themselves into communities ...

Each wanples would tax itself, draw up its own budget and spend according to its ability. Certain property, including land, would be owned communally ... while other property would be owned by the family. Individuals would be left with minimum ownership.

Through moral training, each wanples would be prepared to defend itself through non-violence, even against the world.

The goals of this society would be:

- a Mutual Responsibility (Interdependence)
- b Community Solidarity ... Solidarity is comradeship. It is the wantok [kin] system.
- c Work
- d Mutual Faith
- e Participation
- f Culture and Civilisation
- g Non-violence⁵

The CPC declined to go far down that road but it was equally opposed to the Gearing-Up Program. In Greenwell's view, Canberra wanted no part in constitution-making, but it had to be involved in the transfer of powers. The CPC 'tended to fuse these two matters. Whilst they were not wholly separable the overlap was aggravated by the wide terms of reference.'⁶

Much more ambitious than its predecessors, the CPC ignored precedent. Guise and Arek, who had chaired earlier committees, were not asked for guidance. No one flew to Canberra to consult, nor did Australian advisers shape the agenda. Momis exercised real leadership and John Kaputin emerged as his alter ego. Momis's style was thoughtful and introverted: these qualities were complemented by Kaputin, who had a footballer's physique and a commanding presence. As one of the first Papua New Guineans to marry an Australian, Kaputin and his wife had attracted the displeasure of old-timer Australians and the suspicion of the security branch. Study in Honolulu allowed him to absorb some of the left-wing rhetoric of the 1960s, so — with Momis — he was happy to advocate the nationalisation of the country's mines. When the crunch came, he prized his membership of the CPC above his Cabinet post.⁷ Both men advocated participation, decentralisation and redistribution. In effect, the CPC assumed two roles. One was to conciliate Highlanders and defuse separatism. The other was to draft a constitution for a unique polity. These roles would either divide the members of the CPC or alienate them from government.

In September 1972, the House aimed for self-government on December 1, 1973, giving the CPC 14 months to write a report, debate it in Parliament and draft a constitution. That was impossible, and a compromise was reached in May 1973 with Morrison and the Government: self-government would be introduced in two stages. The first, bringing minimal change, would arrive on schedule on December 1. The second would be some months later, when the new constitution would come into force. In the event, the final report arrived only in August 1974 and debate continued for another year. For the two years until the report surfaced, the CPC was harassed by both governments to hasten, and by the opposition to delay, while those with special interests tried to lobby them — and Momis's electors wanted him to entrench Bougainvilleans' rights.

Lines of accountability were always vague. The CPC was appointed by Somare, but the House laid down its terms of reference:

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 ...

Lines were confused further when members began to claim a mandate directly from the people. Acting on Somare's advice to consult widely, they outperformed every earlier committee. They sponsored the formation of 200 discussion groups across the country, each serviced by officers of the Government Liaison Office. GLO officers would organise meetings, circulate papers, take minutes and report back to the CPC. Apart from their own issues, each discussion group was sent six detailed papers to discuss and respond to. Teams of CPC members, led by Momis or Kaputin, held open meetings in every sub-district of the Territory (more than 100 in the end). The CPC also prompted individual and group submissions. Of 50,000 pro forma 'letter replies' distributed to the public, more than 2,000 were returned. So many were the responses that, said Mackenzie Daudi, 'in the end we abandoned the idea of analysing all submissions'.⁸ And the more feedback they got, the more they treated the public as the source of their mandate.

No one had ever asked villagers such technical questions. The discussion paper on the courts and law officers, for example, asked:⁹

Should judges and full-time magistrates continue to be independent of the Government and have their positions protected by our Constitution? How should they be appointed? Should the House of Assembly approve the appointment of judges?

Who should have responsibility for major prosecutions — a Public Prosecutor whose position is safeguarded by the Constitution? If so, how independent of the Government should he be?

Should the position of Public Solicitor be protected by the Constitution?

The responses to 13 specific questions were incorporated in the final report's chapter on 'The Administration of Justice'.¹⁰

The paper on the Public Service and the Ombudsman was even more sophisticated. The final paper, 'Human Rights, Emergency Powers and "Directive Principles"' (in effect, a philosophy of government), was not distributed until early 1974, while the final report was in draft. Some groups struggled. In the Southern Highlands, a well-attended meeting was baffled:

because these people have no backgrounds of political. So I should say [the Adviser wrote] government must set up a political education in the village areas. Most of these questions were answered by teachers, clerks, medicals, and students.¹¹

So progress was ponderous. The first interim report (tabled on September 27, 1973) was a very general statement. The House met just before Self-Government Day, December 1, when Momis tabled the second interim report. And at last, on June 27, Somare was able to present a draft to the House (the complete version was not printed for another three weeks).¹² The final report would dominate debate until independence — and even beyond.

The CPC Recommendations

The CPC judged that the people should develop their national identity and define national objectives. In this venture, members and consultants were ‘excited, tickled, motivated, and inspired’.¹³ They were also verbose. The final report filled 350 pages. It was, High Commissioner Critchley noted incredulously, longer than India’s Constitution. One reason was the CPC’s determination to spell out its intentions, rather than risk later interpretation. The CPC also specified rights and freedoms to be protected, and propounded five national goals expressing ‘the needs and aspirations of our people in meaningful terms’:¹⁴

Integral Human Development Liberation and Fulfilment: All activities of the State should be directed towards the personal liberation and fulfilment of every citizen ...;

Equality and Participation: All citizens should have an equal opportunity to participate in, and benefit from, the development of our country;

National Sovereignty and Self-Reliance: Papua New Guinea should be politically and economically independent and its economy should be basically self-reliant;

Natural Resources and the Environment: The natural resources and the environment of Papua New Guinea should be conserved and used for the collective benefit of the people; and should be replenished in the interest of future generations;

Papua New Guinean Ways: Development should take place primarily through the use of Papua New Guinean forms of social, political and economic organisation.

It would be difficult to dispute such motherhood sentiments. The most contentious proposals concerned citizenship, a topic that revealed the CPC’s transformative ambition. Declaring their commitment to ‘the indigenous people’, they balked at creating ‘different classes of citizens’, as in Malaysia and Fiji. The people must be able to share the country’s wealth, but

this redistribution of wealth would be made virtually impossible if we immediately made citizenship ... freely available to foreign citizens who have lived here for some years during the colonial era.

Government should be Robin Hood. When governments in other new states tried to redistribute resources, however, ‘constitutional provisions have limited their ability to acquire foreign-owned property’ and obliged them to pay heavy compensation. The CPC wanted Papua New Guinea to enjoy ‘sufficient flexibility to deal with the acquisition of foreign-owned property and payment for it’. Since Momis and Kaputin were demanding the nationalisation of mines, they must have known of the colossal compensation sums that such a policy implied.

The most novel idea was to dispense with a head of state. Surveying the roles of non-executive presidents and governors-general, they reckoned that most functions could be performed by Cabinet, or by the Prime Minister and Speaker of Parliament. All power would then be wielded by elected officers. That was entirely appropriate because ‘it was from the people rather than from kings or chiefs that power was taken by the colonial rulers’.

Suspicious of central control and committed to human rights, the CPC took great pains to prevent authoritarian government. Apart from the last few years of Australian rule, people’s rights and dignity had been ‘suppressed or ignored’. To prevent any recurrence, the CPC proposed to entrench the rights listed in the Human Rights Ordinance 1971 (Percy Chatterton’s initiative) so that only a two-thirds majority could amend them:

- (1) the right to life;
- (2) the right to personal liberty;
- (3) freedom from forced labour;
- (4) freedom from inhuman treatment;
- (5) freedom from arbitrary search or entry;
- (6) the right to protection of law;
- (7) freedom of conscience, thought and religion;
- (8) freedom of expression;
- (9) freedom of assembly and association;
- (10) freedom of employment;
- (11) freedom of movement;
- (12) the right to privacy;
- (13) the right to stand for election to public office and to vote;
- (14) freedom of information; and
- (15) freedom from deprivation of property.

The libertarian thrust did not embrace non-citizens, whose freedoms might in some circumstances be curtailed.

Fearful of despotism, the CPC wanted to disperse power. Three Permanent Parliamentary Committees would preview bills. One would consider constitutional matters, foreign relations, trade and investment, defence, police and the Public Service. A second would oversee finance, industry and natural resources. The third would address social welfare, health, education and justice. The CPC was anxious to protect citizens’ rights even during national emergencies, so the Government’s emergency powers must be overseen by Parliament.

A further restraint was a Leadership Code to be enforced by the Public Prosecutor or the Ombudsman, to ensure the integrity of political, public service and judicial leaders:

If Papua New Guinea is to have any chance of implementing its national goals and directive principles it must ensure that its leadership has a genuine commitment to these goals. [Therefore leaders must not threaten these goals] by collaboration with foreign or national businessmen, or [by] accepting bribes.

The code prohibited leaders and their families from:

- accepting loans from companies;
- accepting bribes;
- misapplying public funds;
- seeking an interest in a government contract;
- using confidential official information for personal advantage;
- holding shares or any other investment that could lead to a conflict of interest;
- in the case of ministers, holding a directorship;
- obtaining any paid employment other than that as a leader.

But the most immediately important proposals concerned decentralisation. Momis intended that elected provincial governments would transform administration:

we realized that a host of institutions had been superimposed on our traditional system ... It was clear to us that, if we were to release the energies of our people, and if we were to enable them and their government to achieve a just, egalitarian self-reliant development we had to loosen the grip of these alien institutions.

Although several districts were interested in decentralisation, it was most urgent in Bougainville, where a Special Political Committee, led by Somare's emissary Leo Hannett, was channelling separatist sentiment into coherent proposals. In July 1973, the SPC demanded district government by November 1. The CPC favoured this outcome and a subcommittee was debating how it could be realised; but the Government's response — to create an area authority with limited powers — fell short.¹⁵ In an attempt to revive negotiations, the CPC subcommittee began to meet Somare's staff (Voutas, Boyamo Sali and Gabriel Gris) and representatives of the SPC (Hannett, Moses Havini and Aloysius Noga) in September.¹⁶ In November, Somare told the House that he would propose an Interim District Government.¹⁷ The CPC's consultants, Watts and Tordoff — amazed by 'an administrative system so highly centralised and dominated by its bureaucracy'¹⁸ — proposed structures and functions for provincial government, including an elected assembly and an executive headed by a premier. Provincial governments would receive grants from the centre, overseen by a National Fiscal Commission.

The Compromise Constitution

In brief, the CPC's thrust was to hedge the powers of the executive, entrench the rights of individuals and groups, distinguish between (indigenous) citizens and non-citizens, and disperse powers. The final report was populist and probably popular, but it did make enemies. While these ideas crystallised, two governments fumed. Morrison railed at the CPC as an interminable philosophy seminar funded by Australia, and he advised Somare to give them an ultimatum.¹⁹ Ministers exercising their new powers were offended by the CPC's suspicions. They would have preferred a simple document, leaving complex matters to be decided by Parliament, or by the executive. Somare was ambivalent, but in March 1974 he seemed to agree, when he remarked that a constitution might not be essential before independence. Bill Kearney (Secretary of Law) and Joe Lynch (Parliamentary Draftsman) imagined an 'interim independence constitution'.²⁰ Lynch suspected that the CPC might make radical proposals that would 'cast too great a strain on society'. To sidestep protracted debates, he proposed a simple device: to adapt the Papua New Guinea Act to confer independence. This submission was drafted before Momis persuaded Somare that the final report was imminent.²¹ Given the depth of these differences, the CPC should not have been shocked when Somare — presenting its final report — also tabled a 'Minority Report' by himself and Guise, allegedly prepared by Voutas.²² The United Party also presented a paper.

All agreed that there should be an 'autochthonous' constitution, home-grown and validated by local — not Australian — law. Somare had asked for a constitution 'suited to the needs and circumstances of Papua New Guinea and ... not imposed from the outside'. The CPC agreed:

A 'home-grown' constitution should, as far as possible, be based on indigenous systems of and ideas about political institutions and procedures ... the Committee believes that it should look to traditional values and procedures for inspiration.²³

Ilinome Tarua explains that the House of Assembly, created by the Australian Government, could not therefore enact a home-grown constitution, although it was the obvious forum in which to debate it. One motion demanded a referendum, but this was defeated 52 to 28 when Somare insisted that the electors had given the House 'a mandate and power to make decisions'.²⁴ So the House was the arena where the thrust of the CPC report was blunted. The House then converted itself into a Constituent Assembly for the last lap.²⁵ The first discussions came in early 1974, when proposals were shown to Cabinet. From April to December, the House considered the draft final report and some of the final report itself. They first debated the CPC report as a whole, then considered each of its 15 chapters. The Constituent Assembly met 27 times in three months. There were literally hundreds of amendments to the draft constitution, many proposed by backbenchers.²⁶ The bulk of the debate was spread over three and a half months, to December 1974, although decentralisation was not discussed until March 1975. Early in 1975, the second and third drafts of the Constitution were discussed by

parliamentary groups; and from May 23 to August 15 the Constituent Assembly debated the final (fourth) draft.

The minority report was published as a White Paper: an angry Momis retorted by calling the majority report the Black Paper.²⁷ Proposals in the United Party paper and from individuals were moved as amendments to the CPC report. Parties shattered and alliances formed. Most of the CPC formed a Nationalist Pressure Group (NPG) around Momis, Kaputin, Kaupa and Daugi, 'to preserve national resources and oppose alien influence'.²⁸ Its membership sometimes reached 28. The United Party shrank and Sinake Giregire — a member of the CPC — left to lead the new Country Party, a small but vocal group that generally supported the NPG. The radicalised allies lost most of their issues, but in an unstable House no outcome was secure.

Drafts by the Parliamentary Draftsman's team became contentious, Momis insisting that Lynch 'continually misunderstood clear drafting instructions'.²⁹ Lynch read these instructions as 'not necessarily final', and Somare supported him when he declared that 'instructions would be handed down by the executive', not by the House.³⁰ After four drafts, relations were so sour that the NPG and the Country Party wanted Lynch sacked, and debate adjourned pending a fifth draft. The startled Government arranged discussions between parliamentary leaders and advisers at which some issues were resolved — but new ones emerged. Kaputin denounced the Government's 'cynical attitude to the constitution, parliament and democracy'.³¹ Eventually, Somare agreed that Lynch should follow the instructions of the House, and a committee oversaw the redrafting.³²

The minority report differed from the majority in general and in detail. The Government took a different view of the size of Parliament, the role of regional electorates, citizenship and provincial government. It rejected group leadership, preferring a head of state elected by Parliament.³³ When it proposed that the House adopt a very brief constitution, containing only 'statements of essential principles', all hell broke loose. Momis and Kaputin were outraged; Somare was provoked to review Kaputin's appointment as Minister for Justice;³⁴ Momis, Pika Kasau and Toni Ila, the three Pangu members of the CPC, were ejected from a party meeting.³⁵ Somare withdrew his invitation to Stone and Wolfers to attend debates.³⁶ Meanwhile, despite the CPC's desire to delay, executive powers were being transferred thick and fast. In March 1975, even the last — defence and foreign relations — were yielded and Papua New Guinea was de facto independent. In June, Somare was able to confirm September 16 as Independence Day.³⁷

In the thick of the political action, passions were intense as the CPC ceased to be a cross-party alliance and took up the role of opposition. Provincial government was the most divisive issue and Barnett wanted it deferred beyond independence. Within the Government, the suspicion formed that some of the Bougainvilleans were resolved on secession and would not be satisfied with provincial government. Like many in Port Moresby, Barnett thought this structure 'totally unsuited' to most of the country and an extravagant dispersal of the country's administrative skills. Briefly, he thought that the issue had been deferred and he was appalled, when he recovered from a bout of cerebral malaria, to find it back on the agenda.

The small scale of the political class tended to magnify hostilities. For example, Momis wounded Moi Avei and other national advisers to Somare when he called them ‘flowerpots’ — merely decorative. But a Wolfers anecdote suggests how some Papua New Guineans could disagree without burning bridges.³⁸ On one magical occasion, he was Somare’s guest on a harbour cruise, although they were on opposite sides of the political divide. As Somare and Barnett were completely estranged from the CPC and its advisers, Wolfers was decidedly nervous when Somare dropped anchor at Barnett’s Loloata Island home. But when they arrived, Wolfers was astounded to find the arch-rebel Kaputin walking on the beach hand-in-hand with Christine Goode from the Papua New Guinea Office.

Relations among Papua New Guineans were usually gentler than among expatriates, and their wounds shallower. Stone and Ley were dismayed by the abandonment of the CPC ideals. In hindsight, Barnett describes them as ‘paranoid about Australian influence’.³⁹ Stone suspected Australians in Somare’s office and Ley detested Barnett and Kearney in particular. Conversely, the denigration of Barnett was sustained, even after he was knocked out of the game by malaria.

Despite personal and ideological disputes there was in reality a large area of agreement. The CPC proposed, the Government accepted (and the Constitution mandated) a unicameral Parliament, an independent judiciary and other liberal democratic checks and balances, including protection of human rights. The National Goals and Directive Principles were adopted without modification. Section 25 of the Constitution required all governmental bodies to give effect to the Goals and Principles ‘as far as lies within their respective powers’. Where a law could be understood so as to give effect to the Goals and Principles, it should be understood and applied that way. Either Somare saw these as general statements that he could live with — or the goals and principles were vague enough to satisfy every point of view. There was agreement as well on the proposed Leadership Code — perhaps for the same reason.

The House did establish a Public Accounts Committee, but the Government looked askance at other permanent committees, perhaps seeing them as ‘uncomfortably like an expensive proliferation of more powerful versions of the CPC; intended to act as permanent watchdogs’.⁴⁰ And, although the CPC disapproved, a conventional head of state was revived in stages. First, the White Paper proposed a head of state elected by Parliament. Then, in May 1975, the Government proposed (in the fourth draft) that the Queen be head of state, with a Governor-General elected by Parliament. The Constituent Assembly agreed. Bayne supposes that the Government retained the Queen as a symbol of continuity to allay villagers’ anxieties.⁴¹ The powers of the Governor-General were (and remain) severely limited. He or she ‘shall act only with, and in accordance with, the advice of the National Executive Council’. Although he or she appoints a Prime Minister, it is Parliament that makes the nomination. Some of the constraints around a State of Emergency were also stripped from the CPC recommendations.

The House had supported the CPC's idea that fundamental provisions could be amended only by two-thirds of the members of Parliament, but the final draft allowed amendment by a simple majority. After heated criticism by Kaputin, the Government agreed to amend this provision on the floor of the Constituent Assembly. The outcome was a set of 'organic laws', which could be amended only with the support of specified majorities.

But citizenship was the most noxious issue, being personal as well as political. Most ministers would have been happy to privilege the indigenous people, but citizenship defined by ethnicity would pose serious procedural and moral — and political — problems. A few leading Papua New Guineans had married Australians. Kaputin and his Australian wife, among others, wanted to secure the rights of their children. There was also the more common awkwardness of ministers and members who held Australian citizenship. The CPC's first idea (that only people with two indigenous grandparents and no other 'real citizenship' would be automatic citizens) would bar ministers Chan and Jephcott, as well as Barry Holloway, the Speaker, and several United Party MHAs. The issue was inflamed when the CPC's ideas leaked to the press and prompted an intervention from Al Grassby, the flamboyant Minister for Immigration in Canberra. As the CPC understood him, Grassby assured Australians that

if they give up Australian citizenship in order to become PNG citizens, they will be able to return to Australia at any time ... and almost certainly regain their Australian citizenship.⁴²

Controversy festered for 18 months and the Constituent Assembly debated citizenship for six days, focusing on the qualifications for foreigners wanting to be citizens, and the situation of people of mixed descent.⁴³ Amendments allowed foreigners who had lived in the country for eight years to apply at once for naturalisation, and instituted a Citizenship Advisory Committee to assess their suitability.⁴⁴ The emotive concept of provisional citizenship survived until the fourth draft. Conversely, the Constituent Assembly agreed to extend (for 10 years) old laws that discriminated in favour of indigenous Papua New Guineans. The amendments also limited the protection of property provisions to 'automatic citizens' for five years. Another amendment enabled Parliament 'to confer a benefit, right or privilege' on automatic citizens only, for the first 10 years of independence. This compromise was a long way from the CPC's first strict ideas about indigeneity and citizenship, but the *Post-Courier* might have been right when it expected the deal to 'provide the cornerstone for the multi-racial society envisaged by the Chief Minister'.⁴⁵

The treatment of provincial government astonished most observers. Some feared that provincial government would mean a proliferation of politicians, while others were anxious about the intransigence of Bougainvilleans. Under Ebia Olewale, as Minister for Provincial Affairs, officials doubted the practicality of the CPC proposals, but attitudes gradually softened. It was astounding then, when on July 30, 1975, after a failed attempt by Albert Maori Kiki to negotiate with Bougainvilleans, the Government moved in the Constituent Assembly to drop provincial government altogether. The stated reason was

expense, but the decision was probably fuelled by anger and frustration among ministers. At any rate, in less than 20 minutes, members voted to withdraw these clauses. That prompted Bougainville's new Interim Provincial Government to threaten to secede as the Republic of the North Solomons. That decision was made 'with the support of, allegedly, some 200 elected traditional leaders'.⁴⁶ Hannett led the movement and (see below) Momis flew to the UN to argue Bougainville's case. The secession failed and provincial government was reconsidered a year later when Momis — reconciled with Somare and Minister for Decentralisation — reintroduced a version of the CPC scheme.

On August 15, 1975, with a month to spare, the Assembly adopted the Constitution. Months of argument and hundreds of amendments had produced a constitution that was only loosely based on the CPC report. Momis, at the UN, said correctly that 'the CPC was not responsible for the drafting of the Constitution as we have it today'.⁴⁷ In his view, Somare and the Australians had stripped it of most of its home-grown and creative features. Peter Bayne entered the debate rather late, when he succeeded Ley as Counsel to Parliament and de facto adviser to the United Party. He judged that the politicians in general were comfortable with institutions that were familiar, and were reluctant to venture into strange constitutional territory. They accepted the CPC view that the Constitution should provide a philosophy for government and for citizens (although the Preamble and the National Goals and Directive Principles were not justiciable). They were also happy to create statutory officers with some autonomy: Public Prosecutor, Public Services Commissioners and Judicial Services Commissioners. The outcome was a conventional Westminster-type constitution — with a few bells and whistles.⁴⁸

Don Woolford put the same point less kindly.⁴⁹ For him, the CPC report

was an imaginative attempt to make constitutional law conform with a distinctive and attractive view of Papua New Guinea. The government ... emasculated its report ... Basically, the committee was ... prepared to take institutional risks ... the government preferred the safety of the status quo. The conflict was at least partly one between visionaries and pragmatists. It was also one between those who thought power should be dispersed and those with whom power resided ...

On that view, the CPC was little more than a diversion, but that is to miss its real importance. The CPC served the purpose that nationalist movements provided in other colonies: its groups and meetings did raise political consciousness and did encourage a sense of national identity. The Constitution does provide national goals against which governments are still measured. It also met its immediate targets. Many participants were unhappy with the outcome but Somare considered that 'in the end, we developed a good Melanesian consensus'.⁵⁰ It is hard to disagree.

Discharging the United Nations Trust

The UN was more easily satisfied than Papua New Guinea's politicians (Chapter 7), but two significant groups resisted the Government's plan, and might appeal to the UN.

Before self-government there had been an abortive attempt to hold a referendum on Bougainville's destiny, but there was no chance that the UN would allow (much less require) a plebiscite for one part of a Trust Territory. A week before Papua New Guinea's independence, the issue came before the Trusteeship Council. The Australian Ambassador introduced the Papua New Guinea delegates — Ebia Olewale as Minister for Justice, Paulias Matane, the country's representative to the UN, Ralph Karepa and Rabbie Namaliu. The council reviewed the circumstances of the mandate and its previous decision of 1973, and heard the Bougainville petition from John Momis. Then they congratulated the Government and people of Papua New Guinea on their 'successful endeavours in preparing for independence' and stated their 'confidence that the unity of the country will be successfully maintained'. They congratulated Australia too, and 'the government and people of Papua New Guinea for the achievement of their independence'.⁵¹ Adding to the convivial mood, Olewale thanked Australia for 'performing the enormous task well'. He was sure that Papua New Guinea's 'close and cordial relationship with Australia' would continue.

Momis's address was sombre: the people of Bougainville had a right to self-determination. For years they had been exploited as workers in Queensland and Fiji. Culturally and ethnically, Bougainville was part of the Solomons Group. 'Long neglected by the Australian Administration, Bougainville was "discovered" in the mid-1960s, when copper was found.' While the financial benefits went to Papua New Guinea, direct landowners suffered the loss of their land and an influx of foreigners. He insisted that, 'although the policies of the Somare government have been enlightened, in practice they are no different from those of the former Australian Administration', and the system of provincial government that could have reconciled Bougainvilleans had been abandoned. Olewale retorted that Momis's principle could result in 700 mini-states. Members of the council made their position clear when they attended the ceremonies at Port Moresby on Independence Day.

But the UN encounter was full of ironies. The second group who resisted national unity were Papuan separatists. In slightly different circumstances, Momis could have represented Papua New Guinea against a Papuan delegation, led by Olewale, their natural champion. In 1971, a Papua Action Group led by Olewale and Bert Counsel agitated for separation (Chapter 4). Their demands were brushed aside but, in 1972, Josephine Abaijah was elected to the House and formed Papua Besena (the Papuan tribe), whose first demand was a plebiscite on separation.

Abaijah's rhetoric played well around Port Moresby, but had little resonance further afield and none in the Southern Highlands, an anomalous part of Papua. Riots in Port Moresby in July 1973 dramatised the tensions between settled Papuans and Highlander migrants. They followed fiery speeches from Abaijah and her mentor, Dr Eric Wright, which allowed officials to represent them as xenophobic and nihilist. As far as possible, officials isolated her. When Morrison met Abaijah in August 1973, he was adamant

that the UN had charged Australia to bring Papua New Guinea to independence as a single entity, and that Australia would deal only with the government of a unified PNG, and would neither deal with nor fund a separate segment.⁵²

Olewale and other Papuan MHAs sympathised with Abaijah's program and weighed their options carefully. They came down on the side of national unity — but it was a close thing.⁵³

Morrison's fears about referenda (Chapter 7) were removed when the UN accepted the resolution of the July 1975 meeting of the House of Assembly. His more serious fear was the High Court of Australia, because the legal case for Papuan separatists was much stronger than Bougainville's. Papua Besena might be incoherent, but a constitutional case brought before the High Court might vindicate their claim to Australian citizenship — and a status different to that of New Guinea. Morrison could only insist that the UN had charged Australia to bring Papua New Guinea, united, to independence, and that Australia would deal *only* with the government of a united Papua New Guinea. But, on the constitutional issue, he could only cross his fingers and pray that no one manufactured a case for the High Court. And that worked. Despite the peculiarities of Papua New Guinea's international status, therefore, and the exceptional ambition of the Constitutional Planning Committee, the outcome of the consultations and the constitutional debates was a united country with a rather conventional constitution.

Footnotes

1. Whitlam in 'Hindsight'.
2. Ibid.
3. Goode, 'Preparation and Negotiation', p. 73, citing Voutas.
4. Constitutional Planning Committee, *Final Report*, 1974.
5. Bernard Narokobi, 'We the People, We the Constitution', in Jean Zorn and Peter Bayne (eds), *Lo Bilong Ol Manmeri: Crime, Compensation and Village Courts*, UPNG, 1975, pp. 19–30.
6. John Greenwell to Allan Kerr, December 1976.
7. John Ley, in 'Hindsight'.
8. Daugi, Transcript of Discussion by Panel of Constitution-Makers, Port Moresby, March 28, 1996, p. 361, cited in Jonathan Ritchie, 'Making Their Own Law: Participation in the Development of Papua New Guinea's constitution', PhD thesis, Melbourne University, 2004.
9. *Post-Courier*, August 22, 1973.
10. CPC, Discussion Paper No. 4, 'The Courts and Law Officers'.
11. Noah Yalon, Adviser to the Komo Discussion Group, Southern Highlands District, n.d., PNG National Archives, cited by Ritchie, 'Making Their Own Law'.
12. *Post-Courier*, June 28, 1974.
13. Bernard Narokobi, 'The Constitutional Planning Committee, Nationalism and Vision', in Regan, Jessep and Kwa (eds) *Twenty Years of the Papua New Guinea Constitution*, p. 28.
14. CPC, *Final Report*.
15. News release No. 1980 B, *Talks on Special Authority*, August 16, 1973, PNGNA. 'Munkas supports Bougainville plan', *Post-Courier*, August 23, 1973.
16. Hannett, Havini and Noga flew to Port Moresby for talks on September 12 (District Commissioner, Arawa to Chief Minister's Office, September 11, 1973, PNGNA).
17. It was agreed that one Papuan and one New Guinean District would also receive district government (Don Woolford, *Papua New Guinea: Initiation and Independence*, UQP, Brisbane, 1977, p. 167).
18. Watts and Tordoff's report, April 1974.
19. Morrison, in 'Hindsight'.

20. Lynch to Kearney, March 28, 1974 (papers of C. J. Lynch), cited in Ritchie, 'Making Their Own Law'.
21. Barnett, 'Policy-Making in the Transfer of Powers from Australia', cited in Ritchie, 'Making Their Own Law'; Michael Somare, 'Transcript of Discussion by Panel of Constitution-Makers, Port Moresby, 28 March 1996', in Regan, et al., *Twenty Years of the Papua New Guinea Constitution*, p. 365.
22. The 'final' *Final Report* was tabled on August 15, 1974.
23. CPC, *Final Report*.
24. 'Referendum move beaten', *Post-Courier*, June 28, 1973. Somare, *Sana: An Autobiography*, Port Moresby, 1975, p. 103.
25. Ilinome Tarua, 'Autochthonous Constitution', in 'Hindsight'.
26. Lynch, 'Current Developments in the Pacific', p. 180.
27. Hegarty, 'May-August 1974', in Moore and Kooyman, (eds), *A PNG Political Chronicle 1967–1991*.
28. Downs, *The Australian Trusteeship*, p. 505.
29. Ley, 'The Challenges and Achievements of the Constitutional Planning Committee', in 'Hindsight'; James Griffin, 'January-June 1975', in Moore and Kooyman, *A PNG Political Chronicle 1967–1991*.
30. Lynch, 'Current Developments in the Pacific', p. 179.
31. *Post-Courier*, May 27, 1975.
32. Ley, 'The Challenges and Achievements of the Constitutional Planning Committee', in 'Hindsight'
33. *Government Paper, Proposals on Constitutional Principles*, Port Moresby, August 1974.
34. *Post-Courier*, July 5, 1974.
35. *Post-Courier*, July 4, 1974.
36. Somare to Momis, May 14, 1974, PNG National Archives, cited by Ritchie, 'Making Their Own Law'; Narokobi, 'The Constitutional Planning Committee, Nationalism, and Vision'.
37. *National Constituent Assembly Debates*, June 20, 1975.
38. Interview, Ted Wolfers.
39. Interview, Tos Barnett.
40. Ley, in 'Hindsight'.
41. Peter Bayne, 'The Constitution', typescript, 1985.
42. Second Interim Report
43. Graham Hassall, 'Citizenship', in Regan, et al., *Twenty Years of the Papua New Guinea Constitution*, p. 257.
44. James Griffin, 'July-December 1975', in Moore and Kooyman, *A PNG Political Chronicle 1967–1991*.
45. *Post-Courier*, July 24, 1975.
46. Griffin, et al., *Papua New Guinea: A Political History*, p. 214.
47. John Momis, 'The Constitutional Planning Committee and the Constitution', in Regan, et al., *Twenty Years of the Papua New Guinea Constitution*, p. 20.
48. Interview, Peter Bayne.
49. Woolford, *Papua New Guinea*.
50. Somare, 'Transcript of Discussion by Panel of Constitution-Makers, Port Moresby, 28 March 1996', p. 364.
51. PNG National Archives, DIES C13/2, part 2. Department of Chief Minister, Circular 716, undated, 'Discussion – United Nations Trusteeship Council'.
52. Interview, Bill Morrison.
53. Interview, Olewale, and Olewale in 'Hindsight'.