

PAPUA NEW GUINEA'S CONSTITUTION
AND AUTOCHTHONY

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SYNOPSIS

This thesis explores the writing and adoption of the Constitution of the Independent State of Papua New Guinea.

It argues that the manner of its adoption fulfilled the requirements for constitutional autochthony: being "constitutionally rooted in its own native soil". This result was due to a combination of three influences, the first of which is the rise of nationalism among the country's first politicians. The ambitions of these politicians for early independence were aided and guided by the commitment and expertise of the small group of expatriates associated with the university and administration: two of the most influential of these were C.J. Lynch and J.W. Davidson. The acquiescent attitude of the Australian Government towards the manner in which Papua New Guinea achieved its independence was the third factor influencing the unusual nature of the Constitution's adoption.

The thesis explores the development of nationalism in the pre-independent Territory of Papua New Guinea, culminating in the formation of a National Coalition Government in 1972. It details the stages in which the Constitution was planned, written and adopted between 1972 and 1975 and considers the evidence for the influence of Lynch and Davidson in the adoption of the Constitution.

The thesis is based on a study of a range of official and personal documents. These include Papua New Guinea's *House of Assembly Debates*, the Final Report of the Constitutional Planning Committee, drafts of the Constitution held by the family of C.J. Lynch, and the papers of J.W. Davidson held by the National Library of Australia. Interviews were held with a number of people involved in the Constitution's development, and relevant newspapers and secondary sources were also consulted.

The thesis aims to contribute to the study of constitution-forming, politics, and history in the Pacific Islands. Additionally, the thesis illuminates the role undertaken by expatriates in the independence of Papua New Guinea.

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Chapter 1: Introduction

Papua New Guinea became independent on 16 September 1975, after nearly a century of colonial administration. Its Constitution claimed that the authority for its independence came from its people. The Constitution began:

WE, THE PEOPLE OF PAPUA NEW GUINEA - ...

By authority of our inherent right
as ancient, free and independent peoples ...

WE, THE PEOPLE, do now establish this sovereign nation and declare ourselves, under the guiding hand of God, to be the Independent State of Papua New Guinea. ...

WE DO NOW THEREFORE DECLARE

that we, having resolved to enact a
Constitution for the Independent State of Papua
New Guinea

AND ACTING through our Constituent Assembly on 15 August
1975

HEREBY ESTABLISH, ADOPT and GIVE TO OURSELVES this
Constitution to come into effect on Independence
Day, that is 16 September 1975.

By establishing the basis for independence in this fashion,
Papua New Guinea's Constitution embodied the principle of
constitutional autochthony, meaning the state of being "sprung

from the land itself". In his 1960 survey of Commonwealth constitutions, Sir Kenneth Wheare had predicted that many former colonies would choose to locate the authority for their independence in such a fashion. These nations would

wish to be able to say that their constitution has force of law and, if necessary, of supreme law within their territory through its own native authority and not because it was enacted or authorized by the parliament of the United Kingdom.¹

The constitutions of these nations would be, in Wheare's words, "home grown, sprung from their own soil", and consequently, *autochthonous*.

When Wheare made this prediction, autochthony was a principle only rarely found, at least among members of the Commonwealth. Until 1960, the overwhelming majority of Commonwealth

¹

K.C. Wheare, *The Constitutional Structure of the Commonwealth*, Oxford, 1960, p. 89. See also Geoffrey Marshall, *Constitutional Conventions: The Rules and Forms of Political Accountability*, Oxford, 1984, p. 206, and Sir Zelman Cowen's discussion of autochthony in Vernon Bogdanor, ed., *The Blackwell Encyclopaedia of Political Institutions*, Oxford, 1987, p. 36.

constitutions were drafted by the British Colonial Office.² Only Ireland, India and Pakistan had made constitutions which have been described as autochthonous, although in each of these cases there has been doubt cast concerning the applicability of the term.³

The first Commonwealth state with a constitution that appeared to fulfil the requirements for autochthony was Western Samoa, where independence was achieved on 1 January 1962. Its constitution drew its validity and authority not "from the law of a foreign country but from the act of the people's representatives", sitting as a Constitutional Convention. The Convention was established by an Ordinance of Western Samoa's pre-independence legislature, which owed its existence to an Act of the New Zealand Parliament, "for the purpose of making provision as to the constitution of Western Samoa". This

² J.C. McPetrie, "Survey of Constitutions Drafted at the Colonial Office Since 1944", in J.N.D. Anderson, ed., *Changing Law in Developing Countries*, London, 1963, p. 29.

³ Wheare, *Constitutional Structure*, pp. 90-105. For a more recent discussion of India and Pakistan's constitutional autochthony, see Sir Kenneth Roberts-Wray, *Commonwealth and Colonial Law*, London, 1966, pp. 289-91.

Ordinance did not empower the Convention to adopt the country's constitution, however. Rather, the authority to do this was assumed by the Convention itself in an attempt to break the link between the law of New Zealand and the new state.⁴ Because of this arrangement, it has been claimed that Western Samoa has succeeded in embracing constitutional autochthony "to the maximum possible extent".⁵ To the planners of Papua New Guinea's independence, however, the Western Samoan model did not go far enough.

The reason Western Samoa failed to fully embrace constitutional autochthony, they considered, was that the assembly which adopted its constitution owed its existence to the New Zealand Parliament. Any action of this assembly was, therefore, reliant for its validity on the legislature of another country. Despite the terms of the Ordinance establishing it, the constitution which the Convention adopted was ultimately dependent on New Zealand for its authority and

⁴ J.W. Davidson, "The Transition to Independence: The Example of Western Samoa", *Australian Journal of Politics and History*, Vol. VII, No. 1, May 1961, p. 34.

⁵ Roberts-Wray, *Commonwealth and Colonial Law*, p. 300.

validity. It failed the stringent test for autochthony employed in the case of Papua New Guinea, which required that the body adopting the Constitution should owe its capacity to do so to no other source than the Papua New Guinean people themselves. In vesting the ultimate authority for the country's laws in the Constitution, "an entirely fresh start" was necessary - "Papua New Guinea had to cut its links to and dependence on Australian law, and to do so clearly and openly."⁶

Constitutional autochthony, therefore, was deemed by the writers of Papua New Guinea's Constitution to require the passing of a more rigorous test than that used in Western Samoa. It was not sufficient for the Constitution to be formally "home grown". For the Constitution to be autochthonous, the links between the ultimate law-making assembly in Papua New Guinea and that of Australia needed to be cut, so that it would not be possible to trace the authority for any Papua New Guinean law to the situation that

⁶

C.J. Lynch, "Current Developments in the Pacific: The Achievement of Independence in Papua New Guinea", *The Journal of Pacific History*, Vol. XV, Part 3, July 1980, p. 183.

existed prior to independence. The framers of Papua New Guinea's independence wanted a constitution that was autochthonous both in the sense of being a "home grown" product of internal political process and discussion, as well as one that conformed to this more rigorous requirement.

This thesis sets out to explore the question of why such attention should have been paid in Papua New Guinea to achieving constitutional autochthony, by examining the history of the Constitution's development. It argues that the unusual nature of Papua New Guinea's independence is due to a combination of three features of its modern history: the drive of the first generation of nationalist politicians; the influence of the small group of expatriate academics and bureaucrats similarly committed to independence; and the acquiescence of the administering power, the Australian Government, in the process.

An examination of the first two of these features will occupy the bulk of this thesis. In Chapters 2 and 3, the development of Papua New Guinea's nationalist politics will be investigated, from the first House of Assembly in 1964 to the

adoption of its Constitution in 1975. The group of educated and sophisticated indigenous politicians that evolved during these years shared a belief, both in an independent future for Papua New Guinea and in the desirability of basing such independence in the people of the new nation.

Chapter 2 takes up the narrative of the Territory's early political development, and concludes with the formation of the first National Coalition Government in 1972. The formation of this Coalition - the largest group in which was elected on a promise to achieve self-government - brought with it demands for a home-grown Constitution. Chapter 3 outlines how this Constitution was written and adopted by the people's representatives in an exercise which fulfilled the requirements for constitutional autochthony and embodied the spirit of nationalism shared by all its participants.

Chapter 4 explores the second feature contributing to the peculiar nature of Papua New Guinea's independence, the influence on constitution-writing of expatriates in the university and government offices. Although there were several of these, two in particular are examined in detail,

both significant participants in the attainment of independence. The first is the Constitution's draftsman, C.J. Lynch, whose long experience with legislative drafting in the Territory gave him "pervasive" influence on legal policy.⁷ The second is Professor Jim Davidson. Davidson's "commitment to political advancement for all Pacific Islanders"⁸ was evident in the Pacific Island States whose independence predated Papua New Guinea's: Western Samoa and Nauru, also the two states which had come closest to constitutional autochthony. The chapter considers the influence of the ideas of Lynch and Davidson in the method in which the Constitution was adopted, to ensure a complete break in legal continuity between Australia and Papua New Guinea, thereby fulfilling all the requirements for autochthony.

The third feature contributing to Papua New Guinea's independence was the acquiescence of the Australian Government. It is neither necessary nor possible to explore

⁷ Peter Bayne, "Legal Policy Making", in J.A. Ballard, ed., *Policy-Making in a New State: Papua New Guinea 1972-77*, St Lucia, 1981, p. 155.

⁸ Donald Denoon, "Davidson, James Wightman", in John Ritchie, ed., *Australian Dictionary of Biography*, Vol. 13, Melbourne, 1993, p. 579.

this in great detail in this thesis. From 1970, both the Department of External Territories in Canberra and the Administration in Papua New Guinea were headed by Australian civil servants committed to the idea of early independence.⁹ The Liberal/Country Party Government which held office until December 1972 was in favour of Papua New Guinean self-determination regarding independence¹⁰, while the Whitlam Labor Government had resolved to divest itself of its colonial responsibilities, but at a pace and in a manner "determined by Papua New Guinea herself".¹¹ The Australian Government had initiated a staged devolution of powers from April 1971,¹² and despite a continuing heavy financial commitment, the last years of Australia's stewardship were characterised by its unwillingness to become involved in the mode of political

⁹ Ian Downs, *The Australian Trusteeship: Papua New Guinea 1945-75*, Canberra, 1980, p. 401. L.W. Johnson, *Interview with Stewart Harris*, 8 June 1994, National Library of Australia, Oral TRC 3068.

¹⁰ Andrew Peacock, "Opening Statement at Constitutional Talks between the Minister for External Territories and the Papua New Guinea Ministry, Port Moresby, 27 July 1972", in *Selected Ministerial Statements on Papua New Guinea, February - July 1972*, Canberra, 1972.

¹¹ E.G. Whitlam, "Freedom for Australia too", *The Australian (Supplement)*, 16 September 1975.

¹² Downs, *The Australian Trusteeship*, p. 480.

development of its Territory.¹³ As an influential factor in Papua New Guinea's independence, the Australian Government was notable for its willingness to stand back and allow developments to develop.

Facilitated by the non-interference of the Australian Government, and guided by the constitutional acumen of expatriates like Lynch and Davidson, the first generation of Papua New Guinean nationalist politicians were free to establish in the Constitution their vision for a separate and independent nation. The idea of early independence, though, was one of comparatively recent ancestry, whose origins lie in the "first stirring of political consciousness"¹⁴ among the tiny band of educated Papuans and New Guineans who had congregated in the capital, Port Moresby, during the 1960s. The following chapter explores further the development of the

¹³ Colin McDonald, personal communication, 15 July 1996. Dr Hank Nelson, personal communication, 20 August 1996: "Australia was determined that the problems that would arise in Papua New Guinea wouldn't be theirs."

¹⁴ Dame Rachel Cleland, *Pathways to Independence: Story of Official and Family Life in Papua New Guinea From 1951 to 1975*, Cottesloe, 1985, p. 315.

idea of Papua New Guinea's nationhood, by examining the rise of the country's first nationalist politicians.

Chapter 2: The Rise of Papua New Guinea Nationalism

For most of the period of Australia's stewardship of Papua New Guinea, political development was placed low on the Administration's agenda. The Australian Government was reluctant to spend money or resources on the territories in general, and the paternalism of its long-term Administrator, Sir Hubert Murray, was echoed in the work of the numerous missions which supplied education of sorts to the population.

Yet when political development did take place, it progressed with startling rapidity. The story of the rise of nationalist political consciousness in Papua New Guinea, from the establishment of the first House of Assembly in 1964 to the formation of the pro-independence National Coalition Government in 1972, will be discussed in this chapter.

It was not until the 1950s that much consideration was given by Australia to the future of its territories in Papua and New Guinea. The aftermath of the Pacific War brought worldwide attention to the issue of colonialism, expressed not least in the United Nations' 1960 *Declaration on the granting of independence to colonial countries and peoples*. On his return

from a conference in London earlier in the year, Australia's Prime Minister Menzies commented that

whereas at one time many of us might have thought that it was better to go slowly in granting independence so that all the conditions existed for a wise exercise of self-government, I think the prevailing school of thought today is that if in doubt you should go sooner rather than later. I belong to that school of thought ...¹⁵

With this, the first major movements toward eventual separation from Australia began in Papua and New Guinea. Progress was initially slow. Although the report of a territorial Select Committee on Political Development had resulted in the creation of the House of Assembly in 1964,¹⁶ this House was "conservative in terms of political development" even though "aggressive in terms of wanting economic development".¹⁷

There were some Members interested in ideas for political advancement, however. This House saw the establishment of the

¹⁵ *Sydney Morning Herald*, 21 June 1960, p. 1.

¹⁶ Downs, *The Australian Trusteeship*, pp. 234-51.

¹⁷ Johnson, *Interview with Stewart Harris*.

first Select Committee on Constitutional Development, chaired by a Papuan Member and former Legislative Councillor, Dr John Guise.¹⁸ The Guise Committee was appointed "to consider ways and means of preparing and presenting, and to draft for the consideration of the House, a set of constitutional proposals to serve as a guide for future constitutional development in the Territory."¹⁹ Guise was joined on the committee by Tei Abal (leader of the Opposition after self-government), Sinake Giregire (who would be a member of the Constitutional Planning Committee in 1972), and Les Johnson (an official member of the House, who would be the Territory's last Administrator from 1970 to 1974). The Guise Committee has been credited with producing a report which "provided the basis for constitutional change leading to virtual home rule after 1972".²⁰

¹⁸ Downs, *The Australian Trusteeship*, p. 362. *The National Times*, May 8-13, 1972, p. 24.

¹⁹ Territory of Papua and New Guinea, House of Assembly, *Final Report from the Select Committee on Constitutional Development*, Port Moresby, 1967, p. 1.

²⁰ Downs, *The Australian Trusteeship*, p. 364.

The call for contributions made by the Committee prompted a long submission, handed to the Committee on 23 January 1967, from a group of disgruntled students and public servants, who came to be called the "Thirteen Angry Young Men".²¹ This submission "came like a bombshell" to the Committee, inspiring one member to declare its contents "impertinent", showing "an absolute disregard of the true facts", and in no way exhibiting "any thankfulness for what has been done for the Territory".²² Such strong words were provoked by sentiments in the submission which had not previously been recorded, such as:

these changes in our thinking have come about because of a realization that if this present system of colonial or territory government continues, with all its inevitable master-servant overtones, serious tensions will develop, in fact are already developing, that will result in a loss of confidence and a complete breakdown of relations not only between the races here but between the two countries.²³

²¹ Michael Somare, *Sana: An Autobiography of Michael Somare*, Port Moresby, 1975, p. 50. *Additional Submission to the Select Committee on Constitutional and Political Development, 23 January 1967*, National Library of Australia, MS 5105.

²² Albert Maori Kiki, *Kiki: Ten Thousand Years in a Lifetime*, Melbourne, 1968, p. 155.

²³ *Additional submission.*

The "Thirteen Angry Young Men" included a young radio announcer with the Department of Information and Extension Services, Michael Somare. Somare had been one of a group of students at Port Moresby's Administrative College who formed in 1965 a political discussion club, dubbed the Bully Beef Club for its meetings' staple food item. "Most of us had felt unhappy about many things we saw in Papua-New Guinea, but it was only at Administrative College that we began to see the practical means of doing something about it", a member reflected afterwards.²⁴ The submission of the "Thirteen Angry Young Men" was one result; but Somare believed that "submissions were not enough ... what we needed was a political party."²⁵

Concurrent with these developments were the efforts of a young Australian member of the House, Tony Voutas, who believed that it was "in Australia's interest to see the flourishing activity of more than one political party".²⁶ With another

²⁴ Kiki, *Kiki*, p. 149.

²⁵ Somare, *Sana*, p. 50.

²⁶ David Stephen, *A History of Political Parties in Papua New Guinea*, Melbourne, 1972, pp. 60-1.

expatriate, Barry Holloway, Voutas set up a "study group" in the House. Through this informal organisation, contact was made between Voutas, Holloway, and the members of the Bully Beef Club. Holloway and Voutas were similarly radical in their ideas, having made a submission to the Guise Committee similar to that of the "Thirteen Angry Young Men".

The confluence of the nationalists headed by Somare and the parliamentary group (which also included indigenous members such as Paul Lapun and Pita Lus) led to the formation in June 1967 of the Pangu Pati - a name "almost certainly inspired by the Kenyan party names Kanu and Kadu" wrote Somare later.²⁷

Pangu (Papua and New Guinea United Party) was the first party dedicated to ending Australian administration and replacing it by Papua New Guinean rule. It was formed in time to contest the 1968 elections for the second House, in which it represented a real opposition to the policies of the Administration.

Pangu won eleven seats in the 1968 elections, and was joined in the House by the United Democratic Party (previously the

²⁷Somare, *Sana*, p. 51.

United Christian Democratic Party, with "seventh statehood" a major policy objective), and the All People's Party (founded by expatriates in direct opposition to Pangu), each winning two seats. The remaining members (about fifty in all) either were not affiliated or chose not to be so publicly.²⁸ The Pangu Pati was therefore the single largest political unit in the House (except the Administration's official members).

The second House of Assembly has been described as "disappointing"²⁹, but it was the venue for much political experimentation. The Pangu Pati chose to establish itself in opposition to the Administration, meaning that for the first time there was an alternative originator of policies. The balance of power in the House, however, was very much in the hands of the non-affiliated members, who came to be called the "Independent Group". Pangu experienced much frustration at the hands of these members.³⁰ One group within the mass of 'Independents' formed Compass in 1970, a party with links to

²⁸ Downs, *The Australian Trusteeship*, pp. 389-91.
Stephen, *A History of Political Parties*, pp. 72-85.

²⁹ Downs, *The Australian Trusteeship*, p. 390.

³⁰ Ibid., pp. 392-3. Somare, *Sana*, pp. 58-9.

the mainly conservative Highlanders, united in opposition to Pangu.³¹ Compass later transformed into the United Party, which won the greatest number of seats in the third House of Assembly elections in 1972 (but which nonetheless went into opposition).³²

From its beginnings, the association of students and bureaucrats which formed the Pangu Pati made no secret of its commitment to nationalism and independence. The submission from the "Thirteen Angry Young Men" called in 1967 for "immediate limited responsible government - or 'home rule'"³³.

In 1970, the first edition of the party newspaper, *Pangu Pati Nius*, included a strongly pro-independence homily from Somare: "today, we in Niugini are following the footsteps of other newly-independent countries who have fought and struggled with the foreign powers to reach their goal."³⁴

³¹ Stephen, *A History of Political Parties*, p. 160.

³² Downs, *The Australian Trusteeship*, p. 490.

³³ *Additional submission*.

³⁴ *Pangu Pati Nius*, April 1970, p. 1.

In 1972, a booklet was released by the Department of Information and Extension Services to inform the population about their choice in the forthcoming elections. Pangu, the United Party and Julius Chan's People's Progress Party each outlined their platforms. The first component in the Pangu manifesto was immediate self-government, while both the opposing United Party and the People's Progress Party were advocates of a more cautious approach. The People's Progress Party stated, in part, that it "is not at all concerned about the timing of self-government. It is concerned about the type of self-government." The United Party wrote that it "believes that a prerequisite for independence is the development of experienced political leaders".³⁵ The Pangu Pati approached the 1972 elections prominently displaying its resolution that, if elected, its first objective would be self-government.

The elections were held in February and March 1972, and resulted in Pangu winning 24 seats, the People's Progress Party eleven, smaller parties 22, and the United Party 42.³⁶

³⁵ Department of Information and Extension Services, *House of Assembly Elections 1972: What Do Political Parties Want for Papua New Guinea?*, Port Moresby, January 1972.

³⁶ Downs, *The Australian Trusteeship*, p. 490.

As "it appeared unlikely that any one party could achieve a majority on its own", Johnson wrote, the weeks preceding the first sitting were occupied with coalition-forming.³⁷ Just the day before the House was due to meet, Somare announced that he "would form the first national government of Papua New Guinea" with a coalition composed of Pangu, the People's Progress Party, and several smaller parties.³⁸

The Pangu Pati's commitment to self-government was exhibited in one of the first acts of the National Coalition Government, when Somare proposed to the House of Assembly the formation of a committee to "make recommendations for a constitution for full internal self-government in a united Papua New Guinea with a view to eventual independence".³⁹ In a move presaged by Wheare, he continued:

it is for our people that a constitution will be made. It is our people who shall have to live under the system of government that is established. We must ensure therefore that the constitution is

³⁷ L.W. Johnson, *Colonial Sunset: Australia and Papua New Guinea 1970-74*, St Lucia, 1983, pp. 112-4.

³⁸ Somare, *Sana*, p. 92.

³⁹ *House of Assembly Debates (HAD)*, 23 June 1972, pp. 279-80.

suited to the needs and circumstances of Papua New Guinea and is not imposed from outside.⁴⁰

"In short", he concluded, "it should be a home grown constitution".⁴¹

How the committee proposed by Somare - the Constitutional Planning Committee - accepted the challenge of such a constitution, and how the constitution was adopted to fulfil all requirements for autochthony, is examined in the next chapter.

⁴⁰ Ibid., p. 280.

⁴¹ Ibid.

Chapter 3: Writing and Adopting the Constitution.

The Constitutional Planning Committee took "the idea of a 'home grown' constitution seriously".⁴² Guided by the call to ensure that "the constitution is suited to the needs and circumstances of Papua New Guinea", it undertook a massive program of public consultation to find out what those needs and circumstances were thought to be. In so doing, it produced a Report that was described afterwards as "a very detailed document with ... ideas about almost every facet of life in our future independent nation".⁴³ This chapter outlines the process by which this Report was prepared and the Constitution which it recommended was adopted.

Somare's motion to establish the Constitutional Planning Committee (the CPC) was introduced in the House on 23 June 1972. After some debate, it was passed in a vote of 52 to 32 late on the night of 27 June 1972.⁴⁴ Six weeks later, on 5

⁴² Constitutional Planning Committee (CPC), *Final Report, Part 1*, Port Moresby, 1974, p. 1/2.

⁴³ *Papua New Guinea Post-Courier*, 28 June 1974, p. 2.

⁴⁴ *HAD*, 27 June 1972, p. 385.

September, after consultation with other Party leaders, Somare announced the committee's membership, which the then Administrator, Les Johnson, later described as "strong".⁴⁵

Apart from Somare, who was to be *ex officio* chair, there were three Pangu Pati members, including the Deputy Chair, Father John Momis. Pangu's coalition partners, the People's Progress Party, provided two members, including the chairman of the Select Committee on Constitutional Development in the second House (1968-72), Paulus Arek. The pro-secession Mataungan Association was represented by the fiery John Kaputin. The committee also included the now-Independent John Guise, the chairman of the first Select Committee on Constitutional Development (1964-68), as well as two members of that Committee, Tei Abal and Sinake Giregire, now with the opposition United Party.⁴⁶

This CPC membership was "likely", Johnson wrote afterwards, "both to wish, and be able, to wag the [Cabinet] dog quite

⁴⁵ Johnson, *Colonial Sunset*, p. 151.

⁴⁶ HAD, 5 September 1972, pp. 590-1. CPC, *Final Report, Part 1*, p. ii.

vigorously".⁴⁷ This outcome was to be facilitated by the inability of Somare to take much part in the CPC's deliberations, the apparent lack of interest shown by Guise, and the death of Arek (the latter two having been chairmen of the two previous committees). It was further enhanced when Somare gave the House details of its advisory staff. In addition to an executive officer (Seaea Avosa, a former district officer) and a legal officer (John Ley, previously Counsel to the House), the list was headed by Professor Jim Davidson of the Australian National University. A former student of Davidson's at the A.N.U., Ted Wolfers, and Dr David Stone, a Research Fellow at the A.N.U.'s New Guinea Research Unit with experience in the newly self-governing Cook Islands (where Davidson had also been involved) completed the committee's permanent advisory staff.

From the time of first meeting on 6 September 1972 until the commencement of the CPC's public consultations around the country in May 1973, "discussion was wide-ranging but no substantive decisions were made."⁴⁸ In early 1973 the

⁴⁷ Johnson, *Colonial Sunset*, p. 152.

⁴⁸ CPC, *Final Report, Part 1*, p. 1/1.

committee took the first steps in search of the views of the people, when leaders in traditional communities were asked to form discussion groups in each council area and leaflets were distributed calling for opinions on the committee's terms of reference, including the system of government, citizenship, and relations between the central, regional and local governments.⁴⁹

Before the CPC began serious consideration of submissions on these issues, two events of some significance occurred. The first was the United Party boycott in March, prompted by a perception that "most of the major constitutional decisions were still being made outside the Committee" and concerns that the constitution should be "a genuine home-grown product instead of an academic exercise".⁵⁰ The issue was quickly resolved, but opposition concerns over the impartiality of the committee's advisers continued throughout the planning exercise.⁵¹ The second event was the death in April of Jim

⁴⁹ *Post-Courier*, 28 December 1972, p. 3; 17 January 1973, p. 10.

⁵⁰ United Party, *Press Statement by the Opposition Leader*, 29 March 1973.

⁵¹ *Post-Courier*, 10 April 1973, p. 1.

Davidson, whose influence in the CPC was already great and whose loss was sorely felt by the committee.⁵²

The stage was now set for the extensive program of public consultations. A large number of submissions - "well over 2,000 in all"⁵³ - were received, either through the discussion groups or independently; and in late May 1973 the committee split into two groups and began the laborious process of public meetings. The first was at Talasea in West New Britain on 28 May, attended by a discussion group of 25 members, and the last was held on 30 September at Finschhafen. In between, the committee's two groups held 107 meetings, from Telefomin on the Indonesian border to the mining town of Arawa on Bougainville, and from Manus Island in the north to Daru at the mouth of the Fly River in the south.⁵⁴ Its program was truly comprehensive.

⁵² Professor E. Wolfers, personal communication, 22 August 1996. See also Deryck Scarr, "James Wightman Davidson (1915-73)", *The Journal of Pacific History*, Vol. XXVIII, 2, December 1993, pp. 135-8.

⁵³ CPC, *Final Report, Part 1*, p. 1/1.

⁵⁴ CPC, *Final Report, Part 2*, pp. A/2-A/16.

The CPC's Final Report noted that the "large attendance at ... public meetings" and the "work of the discussion groups" provided "great encouragement and support" for their work.⁵⁵ Issues raised were diverse, ranging from the woman from West New Britain who "told Papua New Guinea's MHAs that they should stay sober and keep in touch with their people"⁵⁶ to the call by a former Member of the House, at a meeting at Yangoru in the Sepik District, for Papua New Guinea to have a bicameral parliament, with 50 members in each house.⁵⁷ Increasingly, the committee heard opinions concerning citizenship and forms of government. In June, it was reported that:

people from many areas have told the committee that foreigners who have lived in Papua New Guinea for many years and worked for the benefit of the country should be allowed to become citizens of the country provided they were loyal to the government.⁵⁸

In August, a former politician and missionary advocated that the House of Assembly be "abolished in favour of five

⁵⁵ CPC, *Final Report, Part 1*, p. 1/1.

⁵⁶ *Post-Courier*, 31 May 1973, p. 8.

⁵⁷ *Ibid.*, 5 June 1973, p. 3.

⁵⁸ *Ibid.*, 7 June 1973, p. 4.

provincial assemblies",⁵⁹ while in the best "rain, hail or sleet" tradition came the report of one of the last visits:

CONSTITUTION MAN GOES TO BULOLO: A sole member of the Constitutional Planning Committee has finally made it to Bulolo. Bad weather had marred three earlier attempts by the committee to reach Bulolo from Lae. Mr Ila, MHA (Lae) successfully made a special trip to the area at the weekend to hear constitutional submissions from the Bulolo people. The president of the Mumeng branch of the Pangu Party, Mr Vagi Christian, told the meeting that expatriates wanting to take up Papua New Guinea citizenship should be able to build houses from bush materials.⁶⁰

Mr Ila's thoughts on his way back to Lae are not recorded. This bizarre suggestion shared with many other submissions a concern over citizenship requirements.

The last three months of 1973 were devoted to the assembling of the submissions which continued to flow in. Barry Holloway, now Speaker of the House of Assembly, proposed that Papua New Guinea should become a one-party state after independence. Sixty members of the "Highlands Liberation

⁵⁹ Ibid., 9 August 1973, p. 3.

⁶⁰ Ibid., 9 October 1973, p. 3.

Front", presaging the moves to regional autonomy and secession that featured in the coming years, called for a state government for the Highlands. "Nothing if not persistent", the elder statesman of Papua New Guinea politics, Dr Guise, provided a submission which - for the third time - called for, among other changes, a presidential system.⁶¹

With the conclusion of the consultative program, the committee began the task of drafting its Report. When he proposed the CPC in June 1972, Somare had envisaged its Report being made in time to allow self-government in December 1973, but it was soon clear that the mass of information required to be considered by the committee meant there would be a substantial delay in the Report's submission.⁶² To provide some indication of the general nature of its work, the CPC had made two interim Reports to the House, in September and November 1973, but it was March of the following year before even the committee's main proposals were provided to Cabinet, and the Final Report was not submitted until June 1974.⁶³

⁶¹ Ibid., 2 November 1973, p. 18.

⁶² Somare, *Sana*, p. 101.

⁶³ CPC, *First Interim Report*, 27 September 1973 (incorporated in *House of Assembly Debates*, 28

When the main proposals reached Cabinet, the discussion over them reflected the divergence in political direction between the committee and the Government. Both groups were determined that the proposed Constitution should be representative of their own nationalist ideals (as seen in their views on citizenship and forms of government), and both sides believed they had a mandate to decide what was to be included in it. The Government's view was expressed in an editorial in the *Post-Courier*, the Territory's daily newspaper:

The Cabinet has already gone a long way, perhaps much further than it should have for its own good, in indulging the planning committee. This situation must not, however, be taken to mean that the Cabinet has abdicated its responsibilities on constitutional matters to the planning committee.⁶⁴

Momis, on the other hand, defended his committee's authority to make the constitution, citing the fact that "...neither the Cabinet nor anyone else has consulted the people on

September 1973, pp. 2911-20); *Second Interim Report*, 27 November 1973 (incorporated in *House of Assembly Debates*, 27 November 1973, p. 3215.); *Post-Courier*, 1 March 1974, p. 1.

⁶⁴

Post-Courier, 29 March 1974, p. 2.

constitutional matters. The committee has gone to great trouble to do so."⁶⁵ The Constitutional Planning Committee, in other words, had taken its charter to produce a "home grown" constitution to heart, even if Cabinet had not. Somare refused to waver. In response to Momis, he flatly reaffirmed that "it will be Cabinet which approves the final Bill".⁶⁶

Despite this, debate continued between the CPC and Cabinet well into June, when the Final Report was tabled. Somare and Guise, both official but not active members of the CPC, released a white paper which was intended to show the Cabinet's position with regard to the Final Report's recommendations. The CPC, they wrote, "had assumed the role of a sort of royal commission and it was unreasonable for it to expect that cabinet would blindly support all its recommendations."⁶⁷

The white paper - published as the *Government Paper: Proposals on Constitutional Principles* - did not, Somare reflected

⁶⁵ Ibid., 3 April 1974, p. 2.

⁶⁶ Ibid., 4 April 1974, p. 3.

⁶⁷ Somare, *Sana*, p. 105.

afterwards, "differ all that much" from the CPC's Report in its recommendations.⁶⁸ But its publication hard on the heels of the Final Report provoked much controversy. Three Pangu Pati members (including Momis) were ejected from a party meeting called to discuss the Reports; John Kaputin, for the CPC, attacked "the moral position" of the white paper; and Somare, in turn, affirmed that he was "fully prepared to take up the challenge" and defend it on the floor of the House.⁶⁹

At some time prior to the tabling of the committee's Final Report (probably in May or June 1974) an advisory paper was prepared by the Constitution's draftsman, the Special Legislative Counsel, C.J. Lynch.⁷⁰ It outlined the steps by which the Constitution could be adopted in an autochthonous manner. The first stage Lynch envisaged was for the House of Assembly to adjourn and reconvene as a Constituent Assembly to "establish a Constitution for an Independent Papua New Guinea to come into effect on a specified day ('Independence Day')".

⁶⁸ Ibid.

⁶⁹ *Post-Courier*, 4 July 1974, p. 1.

⁷⁰ Reasons for the dating of Lynch's paper to this period are discussed in the next chapter.

This Constituent Assembly would adopt the new Constitution, and concurrently an Australian Act recognising the independence of Papua New Guinea, repealing the Papua New Guinea Act, and terminating the exercise of any powers of legislation, administration or jurisdiction in or over the independent state of Papua New Guinea would be passed by the Australian Parliament. Lynch specified the need for the House of Assembly to reconvene as a Constituent Assembly:

since the House of Assembly is itself created by an Australian Act, it seems desirable in order to mark a complete break with the legal past that the House should not itself establish the Constitution. If it did, it would appear that the Constitution was not autochthonous (or "home-grown") ...⁷¹.

The CPC clearly agreed. Chapter 15 of the Final Report proposed:

2. (1) The Papua New Guinea House of Assembly shall convene on a date to be fixed by

⁷¹

C.J. Lynch, *Autochthony for Papua New Guinea - The Source, Legitimacy and Requirements of a Completely "Home-Grown" Constitution*, personal papers (N.D.).

the Speaker on the advice of the Executive Council, and resolve to adjourn and reconvene as a Constituent Assembly under the chairmanship of a person elected by the Constituent Assembly.

- (2) The Constituent Assembly shall consider the Draft Constitution, adopt it (with or without amendment) and establish the Constitution of the Independent State of Papua New Guinea, which shall come into force on Independence Day.
-
3. (1) The Papua New Guinea Government should request the Australian Government to introduce into the Australian Parliament a Bill for an Act which would come into force immediately before the expiration of the day before Independence Day and provide for a number of matters concerning Papua New Guinea on and from Papua New Guinea's Independence Day.
 - (2) That Australian Act should provide that on and from Independence Day -
 - (a) the Independent State of Papua New Guinea is recognized and acknowledged as a sovereign Independent State;
 - (b) the Papua New Guinea Act 1949-1973 is repealed; and
 - (c) Australia ceases to have and shall not exercise any powers of legislation, administration or jurisdiction in or over the Independent State of Papua New Guinea.⁷²

⁷²

CPC, *Final Report, Part 1*, pp. 15/4-5.

This near-verbatim version of Lynch's proposals was not seriously questioned in either the *Government Paper: Proposals on Constitutional Principles* or the *United Party Proposals for the Constitution*⁷³. The *Government Paper* noted that

the CPC has insisted from the beginning that the Constitution must be home-grown (autochthonous). The government supports this view. The methods proposed for implementing it are acceptable to the government.⁷⁴

The United Party largely concurred:

the United Party also supports the principle that the Papua New Guinea Constitution should not rely on the law of any other country for its validity. We agree in general with the procedure recommended by the CPC, but we feel that the CPC may have gone too far in its proposals concerning an Australian Act to accompany the Constitution. We do not think that it is necessary for this Australian Act to recognize and acknowledge the Constitution of Papua New Guinea.⁷⁵

⁷³ *United Party Proposals for the Constitution*, Port Moresby, 1974.

⁷⁴ *Government Paper: Proposals on Constitutional Principles*, Port Moresby, August 1974, p. 49.

⁷⁵ *United Party Proposals for the Constitution*, p. 43.

With widespread support, the chapter dealing with the autochthonous adoption of the Constitution was one of the least contentious elements of the CPC's Report.

At the formal conclusion of their task, the members of the Constitutional Planning Committee did not, as might have been expected, return to their political homes. Instead, they continued their association by establishing in September 1974 the Nationalist Pressure Group (NPG), which, although its members ostensibly retained their former party affiliation, tended to vote as a bloc.⁷⁶ In effect, the NPG formed a second opposition party, sometimes working with the United Party to frustrate Somare and his Government as the House debated the Report chapter by chapter over the coming months.

The first chapter of the Report - with its discussion of the Constitution's underlying principles - was agreed by the House on 30 September,⁷⁷ and from then until the House rose at the end of the year debate continued. By 9 December, an eclectic collection of the Report's chapters and provisions had been

⁷⁶ Downs, *The Australian Trusteeship*, p. 505.

⁷⁷ *Post-Courier*, 1 October 1974, p. 1.

passed, with the key exceptions of Chapters 7, 8 and 10 (The Executive, The Administration of Justice, and Provincial Government). On 28 November, the non-controversial Chapter 15, with its blueprint for the autochthonous adoption of the Constitution, was agreed to, clearing the way for contests which continued well into the next year over the more contentious items.

1975 began with the expectation that Papua New Guinea would gain its independence by "the last weekend in June", with a Constitution Bill due to be prepared before the first sitting of the House on 24 February.⁷⁸ In this sitting, the House of Assembly voted that

this House sets as drafting instructions to the First Legislative Counsel for preparation of Draft Constitution and related Bills, the recommendations set out in the final report of the Constitutional Planning Committee ...⁷⁹

With these instructions, Lynch prepared the so-called "Fourth Draft of 10/5/75", to be examined by the House in its May

⁷⁸ Ibid., 1 January 1975, p. 1; 9 December 1974, p. 4.

⁷⁹ HAD, 11 March 1975, p. 5743.

sitting, commencing with "informal briefings of members" in the week 19 - 23 May.⁸⁰ As planned, and in keeping with the recommended strategy for autochthonous adoption of the Constitution, the House adjourned and reconvened as the National Constituent Assembly on 23 May when debate on the Constitution proper commenced.

The National Constituent Assembly met 27 times over the next three months, its sessions interspersed with regular meetings of the House of Assembly, which dealt with ordinary matters. Debate in the first weeks of the Constituent Assembly's meetings concentrated on Lynch's Fourth Draft, which when received by the House provoked outrage over perceived differences between it and the drafting instructions that had been provided. The Nationalist Pressure Group declared that the Government had "blatantly breached" the trust of the House of Assembly, and that the Fourth Draft represented the Government's own version of the Constitution. John Kaputin charged the Government with having a "cynical attitude to the constitution, parliament and democracy" and "treating the

⁸⁰ Ibid., 19 May 1975, p. 5806.

House of Assembly drafting instructions with contempt".⁸¹ For the Government, Somare defended both Lynch's role and the good faith with which the drafting instructions were given to him; but the further delays caused by the NPG's actions clearly frustrated him: "at one stage the Chief Minister told the Assembly he was 'sick and tired' of the way things were going."⁸²

In late May, the combined forces of the NPG and the United Party extended the time for debate (in a vote of 48 to 44), effectively putting off the date for independence, although Somare remained "confident ... there could still be September independence".⁸³ But first, there remained the continuing issue of provincial government, eventually resolved on 30 July when the Government summoned the numbers to remove provisions for provincial government from the Constitution.⁸⁴ With this accomplished, the way was now clear for the Constitution to be

⁸¹ *Post-Courier*, 27 May 1975, p. 1.

⁸² *Ibid.*, 29 May 1975, p. 1.

⁸³ *Ibid.*, 30 May 1975, p. 1.

⁸⁴ *Ibid.*, 31 July 1975, p. 1.

adopted on 15 August 1975, when members voted 47 to 20 to pass Somare's historic motion:

that now we the Members of the National Constituent Assembly acting as the representatives of and for and on behalf of the people of Papua New Guinea do this fifteenth day of August 1975 hereby -

(1) Establish, adopt and give to ourselves as the Constitution the document known as the Fourth Draft of 10 May 1975 (renumbered and revised), the Constitution of the Independent State of Papua New Guinea, as amended by this Constituent Assembly.⁸⁵

The quest for a Constitution was complete. The extensive consultations and the painfully slow progress through Cabinet, the House and the Constituent Assembly, had resulted in a document which, for better or worse, guided the new state of Papua New Guinea through independence. Criticised for its bulk by some, the Constitution received support both from Somare, who described it as a "living document, flexible so that the people can change it", and from the United Party leader, Tei Abal, who called it a "very important document for

⁸⁵

National Constituent Assembly Debates, 15 August 1975, p. 445.

this country" which "should be respected and kept for all time".⁸⁶

Through being adopted by the National Constituent Assembly and not by the House of Assembly, the Constitution formally owed its authority to the people of Papua New Guinea alone, through their representatives. The logistics of conducting a referendum meant that this avenue for determining the popular will was never seriously considered by the country's leaders.⁸⁷

Given this, the method of adoption was the most likely to reflect what was considered to be the will of the people at the same time as removing all taint of association with the pre-existing administration. While there had been attempts at achieving this result in Western Samoa and Nauru, in both these situations the assembly which adopted the constitution was established by the pre-independence legislature, whose authority to do so was bestowed by an Act of the New Zealand and Australian Parliaments. In Papua New Guinea, body which adopted the Constitution did not owe its authority to formally

⁸⁶ Ibid., p. 447.

⁸⁷ "Somare rejects poll on home rule as 'waste', *The Australian*, 11 September 1973, p. 2. "Referendum move beaten", *Post-Courier*, 28 June 1974, p. 3.

do so to any external source. The resulting Constitution was consequently an embodiment of the principle of autochthony.

The Constitution was a creation of the nation's political elite, a symbol of their belief in the individuality of their nation and culture. The nature of its adoption meant that in addition to being written by and for Papua New Guineans, it represented the ability of the new nation to consider itself, in Wheare's words, "on a footing comparable to that enjoyed by the other sovereign independent states in the world".⁸⁸

The push for a home grown Constitution was supplied by the coalition of nationalists, anti-colonialists and regionalists that included Somare, Momis and Kaputin, but it appears to have been expatriates, exemplified by Lynch, the Constitution's draftsman, and Davidson, the CPC's adviser, who provided the guidance which resulted in the style of the Constitution's adoption. The following chapter will explore the evidence for Lynch's and Davidson's pivotal role in this process.

⁸⁸

Wheare, *The Constitutional Structure of the Commonwealth*, p. 113.

Chapter 4: The Role of the Expatriates

The document which was approved by the National Constituent Assembly had its roots in the "views of the people", gathered by the Constitutional Planning Committee. But the CPC considered that "to make adequate provision for what we believe are [the people's] needs and aspirations, and to take due account of their fears", the Constitution should be legally home-grown as well.⁸⁹

The mechanism that produced this result was outlined in the preceding chapter. This chapter will examine the evidence for the claim that the method of adoption was significantly influenced by the ideas of Lynch and Davidson.

C.J. Lynch was highly qualified to draft the Constitution, which he did as part of his duties with the Chief Minister's Department. He had been involved as a legislative draftsman in Papua New Guinea since the early 1960s and his interest in and understanding of constitutional issues were exhibited as early as 1961, when he wrote a description of the

⁸⁹CPC, *Final Report, Part 1*, p. 15/1.

constitutional changes that took place in the Territory in 1960.⁹⁰

Given his 1974 paper "Autochthony for Papua New Guinea", he is also a most likely source for the manner in which the Constitution was adopted. Moreover, there are other documents which support this view, including an exchange of notes with Bill Kearney, the Secretary for Law in the Territorial Administration, in March 1974. At this time, there was some concern over the perceived tardiness of the CPC in submitting its Report. Accordingly, Lynch wrote to Kearney suggesting that an interim constitution be prepared for study, based on the current Australian Papua New Guinea Act, and submitted to the Chief Minister as soon as possible. Kearney agreed with the proposal, noting that "this approach may be necessary ... at any rate, it is a desirable 'fail-safe' exercise".⁹¹ A draft constitution was in fact prepared, but the exercise did not progress any further.

⁹⁰ "A New Constitution for Papua and New Guinea", *Journal of the Polynesian Society*, Vol. 70, No. 2, June, 1961, pp. 243-7.

⁹¹ C.J. Lynch, *Notes on a Possible Interim Independence Constitution*, Personal papers, 28 March 1974. (Margin notes by Kearney.)

This exchange of notes is especially revealing regarding Lynch's views on autochthonous adoption. Writing to Kearney, he suggested two alternative methods by which the interim constitution could be adopted (in the interests of minimising the delay caused by the debate in the House). The first was that the existing Australian legislation could simply be adopted by Papua New Guinea, with a schedule of amendments - an idea Lynch dismissed as "just a horrible mess". The second is of more interest:

The Constitution could be conferred by an Australian Act, as the Australian Constitution was by a U.K. Act. However, I doubt if anyone, including Australia, would wear that, except at the specific request of the Government or, perhaps, the House of Assembly, and that would take away any conceivable advantage that there might be in the idea.

"I am somewhat puzzled", Kearney wrote in the margin,

as to the Australian end of this Independence exercise. What do you envisage the Australian legislation to be? Do you envisage something like a 'washing of hands' by Australia, with a purely autochthonous Constitution - i.e., a break in legal continuity?

"Frankly", answered Lynch, "I don't know."⁹²

If, by the end of March, Lynch was uncertain of the mechanics of independence, this may help to date his "Autochthony for Papua New Guinea", the contents of which were so closely echoed in the CPC's Final Report, to the period between his exchange of notes with Kearney and the submission of the Report. Yet further documents reveal that he had in mind just such an eventuality as early as 1967.

In the first House of Assembly (1964-8), the Guise Committee called for contributions in its search for "a set of constitutional proposals to serve as a guide for future constitutional development in the Territory."⁹³ A submission was received in 1967 from Barry Holloway and Tony Voutas, which said in part:

with the legal protection so far as possible of the fundamental principles of the constitution itself, an independent judiciary, a neutral public service, and the need for a constitutional revolution in

⁹² Ibid.

⁹³ Territory of Papua New Guinea, House of Assembly, *Final Report from the Select Committee on Constitutional Development*, p. 1.

order that the Territory might determine its own constitutional future, as outlined by C.J. Lynch and others, we have no quarrel, at least in principle.⁹⁴

What "constitutional revolution"? A possible candidate is provided in *Notes Towards a Possible "Council of the People of Papua and New Guinea"*, a draft of a submission by Lynch for the Guise Committee, dated 10 February 1967 (although as the Committee's Report did not list submissions received there is no way to confirm that it was in fact submitted). Lynch wrote that

the intention of this paper is to put forward for consideration the idea of a future "Council of the People" for Papua and New Guinea, more widely representative than a working Parliament can very well be, and capable of dealing with certain constitutional issues without resort to the clumsy, expensive and probably ineffective device of a referendum.⁹⁵

⁹⁴ *Submission to the Select Committee on Constitutional Development* from B. Holloway (MHA, Kainantu) and A.C. Voutas (MHA, Kaindi), March 1967, National Library of Australia, MS 5105. Italics added.

⁹⁵ C.J. Lynch, *Notes Towards a Possible "Council of the People of Papua and New Guinea"*. (Submission to the Select Committee of the House of Assembly on Constitutional and Political Development in Papua and New Guinea), Draft of 10 February 1967, Personal papers.

The Council envisaged by Lynch would exist alongside Parliament, and would deal with, among other eventualities, the making and amendment of a Constitution. "Above all, perhaps", Lynch wrote, "I thought in terms of wedding the people to the Constitution and to constitutionalism, and vice versa."⁹⁶

If this submission did contain the outline referred to by Holloway and Voutas, then it was truly revolutionary. The Report of the Guise Committee - while significant in its recommendations concerning ministerial government - did not address the issues raised in Lynch's submission. Yet the submission's existence, and the reference to it in that of Holloway and Voutas, are the earliest evidence that the ideas considered by Wheare and others were being similarly examined within the Territory. Certainly, the establishment of the Constituent Assembly which did eventually adopt Papua New Guinea's Constitution was not completely foretold in Lynch's submission. But the ideas foreshadowed in the 1967 draft submission and elaborated in the 1974 advisory paper illustrate Lynch's contribution to the building up of the

acceptance of the principle of constitutional autochthony in the Territory.

Professor Jim Davidson held the foundation chair in Pacific History at the Australian National University, and was an active participant in the politics of the Pacific. He justified this by saying that he "could not study the past satisfactorily without an interest in the structure of contemporary society".⁹⁷

Davidson had a lengthy pedigree in constitution-forming, being closely connected with the independence or self-government of Western Samoa (from 1947), the Cook Islands (from 1963), Nauru (from 1967) and Micronesia (from 1969).⁹⁸ His experiences in Samoa - where he described himself as a "passionate partisan"⁹⁹ - were seminal in his approach to the issues of colonialism and sovereignty. In writing of his involvement,

⁹⁷ Quoted in Denoon, "Davidson, James Wightman", p. 579.

⁹⁸ Ibid.

⁹⁹ J.W. Davidson, *Samoa mo Samoa: The Emergence of the Independent State of Western Samoa*, Melbourne, 1967, p. x.

he in no way underestimates his own role in Samoa's transition to independence, a role that involved adroit manipulation of meetings in the cause of Samoan unity, on the one hand, and, on the other, an opposition to his own countrymen's paternalism which - implacable, vociferous opposition as it was - sacrificed, one suspects, little to tact.¹⁰⁰

Similarly, Davidson had a "profound" influence on Nauru's transition to independence, as constitutional adviser in 1967: "his belief in the republican ideal, for example, resulted in Nauru adopting republican statehood."¹⁰¹

Davidson had first visited Papua New Guinea in 1951 and continued a connection with the Territory through the 1960s. His experiences in Western Samoa and Nauru demonstrated his inclination in favour of autochthony, and some of the documents relating to his time in Papua New Guinea in the 1960s provide further indications.

¹⁰⁰ Scarr, "James Wightman Davidson (1915-73)", p. 136.

¹⁰¹ K. McDowell, "The Factors Behind the Constitutional Arrangements in Nauru", in Peter Sack, ed., *Pacific Constitutions*, Canberra, 1982, p. 80.

In a speech to a meeting of the Papua and New Guinea Society in Port Moresby, chaired by Dr Guise in his capacity as chair of the Committee on Constitutional Development (1965-8), Davidson said that

it seems likely that the leaders of the Territory, and probably also of Australia will choose independence - the solution that has been adopted by the great majority of developing countries. Such a choice would be likely to arouse greater enthusiasm [than seventh statehood within Australia] among the politically sophisticated section of the people of the Territory, at least. It would probably cause them to identify themselves more completely with the interests of the country and to work in greater unity and a more intense sense of dedication to its interests.¹⁰²

A later paper (dated 4 June 1969) outlined Davidson's views on legal autochthony. Referring to an earlier section of the paper which "mentioned some ways in which constitutions could be made hard to change", he wrote:

they all assumed the constitution was made inside the country concerned. There is another, quite different sort of way. If the constitution is passed as a law of some other country, e.g.

¹⁰² J.W. Davidson, *Text of speech given to the Papua and New Guinea Society* - Hohola Community Centre on 28 February, year unknown. National Library of Australia, MS 5105.

Australia, and then applied to Papua and New Guinea, then nobody inside Papua and New Guinea could change it, unless the outside (Australian) parliament agreed ... Would Papuans and New Guineans want to protect their constitution in this way?¹⁰³

Whether Davidson's view on the inflexibility of an externally-produced constitution were correct, it is clear that by 1969 the possibilities of constitution-forming were being tested. A further paper - undated, but probably later than Lynch's submission to the Guise Committee and before 1971 - directly addressed the issue of formal adoption of the constitution.

Co-authored by R.S. Parker, the paper stated:

Earlier we were considering the desirability of having the preliminary work on the new constitution for Papua and New Guinea done by a select committee of the House of Assembly. We thought that after that, the draft should be submitted to a constitutional convention, probably containing all the Members of the House of Assembly, plus a large number of members specially elected to take part in the making of the new constitution ... We also considered the legal standing of the constitution. If the constitutional convention can take to itself the power of giving Papua and New Guinea a constitution, the law of Papua and New Guinea from the time that constitution comes into force derives

¹⁰³

J.W. Davidson, *Constitutions for Papua and New Guinea*, 4 June 1969, National Library of Australia, MS 5105.

from the act of the constitutional convention
itself.¹⁰⁴

Assuming a date between 1967 and 1971, the mechanics for autochthonously adopting the constitution were being discussed, at least by Davidson and Parker, perhaps up to five years before Somare's announcement of the CPC in 1972. If this is so, it may explain why the idea of constitutional autochthony evoked so little opposition when the CPC outlined its proposal for the Constitution's adoption in its Report.

Since Davidson was not simply an academic, but a keen participant in political issues, there is a strong likelihood that he was involved more closely than has already been suggested in the political development of the Territory, even before his formal participation with the CPC. Evidence for this can be seen in two documents. The first is an undated, unsourced paper in the Davidson archives, which appears to be a policy advice written for Somare by one of his advisers between the formation of the National Coalition Government in

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New Guinea Constitutional Development - Some Comments by J.W. Davidson and R.S. Parker (N.D.), National Library of Australia, MS 5105.

April 1972 and the establishment of the CPC in June.¹⁰⁵ The paper discusses the timing of self-government and the establishment of "an all-party committee to plan a constitution for self-government". "For political reasons", it suggested,

in order to allow sufficient time for the constitution planning committee to do its work and for the relevant legislation to be passed, it may be considered desirable to provide for a period of about twelve months - say 1 June or 1 July 1973. If it were also stressed that the Opposition was to be given representation on the committee, this might also help to relieve tension.

The advice went on to discuss the method of adoption of the constitution:

In addition, the committee should be asked to consider the mechanism for implementing the constitution. The committee may give special attention to the possibility of the constitution being passed by both the Australia and Papua New Guinea Parliaments ...

¹⁰⁵

Self-government and a Constitution, (N.D.), National Library of Australia, MS 5105.

Scribbled in Davidson's handwriting in the margin against this point is the one word "NO". Was this in response to the suggestion that the constitution be passed by the Australian Parliament? Given Davidson's experiences elsewhere and his earlier advocacy of autochthony, it is probable that it was.

The second document is the draft of a speech - in Davidson's handwriting - clearly, from its content, intended to be given by Somare to his Ministers before moving the establishment of the Constitutional Planning Committee in the House on 23 June 1972. Corrections and alterations have been made in it which do not appear in a typed version also in the archives. This may be explained in two ways. Either Davidson actually wrote the text of the speech, which was subsequently typed and presented by Somare, or he may have transcribed it in discussion with Somare, possibly in conjunction with his advisers. As the speech would have been given in Cabinet (whose records are unavailable), it is not possible to confirm the form of its final presentation. But the possibility of Davidson's close involvement with its preparation gives it some significance in the context of the present study.

The speech foreshadowed Somare's plan to establish the CPC. "I intend to move shortly in this Council [i.e., the Administrator's Executive Council or 'Cabinet']", went the speech, "for the appointment of a committee to consider the constitutional changes that will be necessary when Papua New Guinea becomes self-governing."¹⁰⁶ Had the plan to establish the CPC in this way, come from Davidson? If he wrote the words that were to be spoken by Somare, there is a possibility that he was similarly responsible for the concepts that underpinned them.

The full extent of Davidson's influence on the mechanism of the Constitution's writing and adoption will remain unknown. His lengthy experience with constitution-forming, as well as the documentary evidence examined here, attest to his endorsement of the ideas of constitutional autochthony. Moreover, as the above documents suggest, it is possible that he may have been closely associated with the policy taken by the Territory's leadership towards independence and the

¹⁰⁶

The Development of the Constitution, (N.D.), National Library of Australia, MS 5105.

Constitution. If so, Davidson was a significant contributor to the process of the Constitution's writing and adoption.

Similarly, Lynch had considerable influence in the process. As suggested previously, his position as legislative draftsman "meant that his influence on legal policy ... was pervasive."

He combined the authority of this position with an abiding interest in "original and radical reforms to the legal system", and he had "close contacts with judges and other lawyers, but he also maintained links with several

'radicals'.'¹⁰⁷ As the Constitution's draftsman, he remained in direct contact with the CPC during the preparation of its Report, and despite some evidence of strained relations between him and the committee's advisers towards the end of the exercise, he must be regarded as one of the Constitution's architects.¹⁰⁸

¹⁰⁷ Peter Bayne, "Legal Policy-Making", in J.A. Ballard, ed., *Policy-Making in a New State*, pp. 155-6.

¹⁰⁸ T.E. Barnett, "Policy making in the Transfer of Powers from Australia", in J.A. Ballard, ed., *Policy-Making in a New State*, p. 70. Peter Bayne, personal communication, 21 August 1996.

Lynch and Davidson are examples of, and among the most influential of, the wider group of expatriates whose work contributed to the Constitution's development, including the advisers to the CPC, Wolfers, Stone and Ley, and the administrators, Johnson, Ryan and Barnett.¹⁰⁹ Through their expertise and commitment to the idea of Papua New Guinea's independence, they were instrumental in the manner in which the Constitution was adopted and consequently, in the completeness with which Papua New Guinea embraced the principle of autochthony.

¹⁰⁹

L.W. Johnson, personal communication, 13 October 1996.

Chapter 5: Conclusion

This thesis has argued that the Constitution of Papua New Guinea embraced the principle of autochthony because of the drive of the nation's first politicians which was guided by the constitutional ideas of expatriates, and facilitated by the policy of acquiescence of the Australian Government.

Chapter 2 showed the development of political consciousness in the Territory before independence. It traced the origins of such consciousness to three concurrently occurring developments in the early to middle 1960s. The first of these was the establishment of the Select Committee on Constitutional Development in the Territory's first House of Assembly in 1964-68, the outcome of which was the system of virtual 'home rule' which nurtured many of the Territory's nascent political leaders. The second was the spontaneous growth of nationalist consciousness that occurred in Port Moresby's Administrative Staff College, leading to the submission from the "Thirteen Angry Young Men" in 1967. The third - the actions of concerned expatriate Members such as Voutas and Holloway in the first House - combined with the

extra-parliamentary nationalist movement to form the Pangu Pati in 1967. These three developments resulted in the formation of the National Coalition Government following the elections in 1972, with a policy platform in which self-government and independence figured prominently.

The third chapter took up the narrative of the formation of the Constitution for the new nation. It showed how the group of politicians who made up both the Government and the Constitutional Planning Committee ensured that the Constitution which resulted from their deliberations was based in the authority of the Papua New Guinean people. It also told how the Constitution was adopted in such a way as to guarantee that there was a complete break in legal authority between the Australian Parliament and the new state, thereby fulfilling the conditions for autochthony specified by Sir Kenneth Wheare in 1960.

The fourth chapter suggested that the Constitution's formally autochthonous adoption was at least in part influenced by the views of two expatriates in particular, Lynch and Davidson. It showed how, in the case of Lynch, he had argued for a

"Council of the People" - analogous but not identical to the National Constituent Assembly which eventually was to approve the Constitution in 1975 - as early as 1967 in a submission to the Select Committee on Constitutional Development. The ideas contained in this submission were echoed in the advisory paper which he prepared in relation to the activities of the Constitutional Planning Committee in 1974, which in turn presaged the arrangements for autochthonous adoption included in the CPC's Final Report. In the case of Davidson, his long involvement with nation-forming in the Pacific, and in particular with the near-complete autochthony in Western Samoa and Nauru, provided a background to his involvement in Papua New Guinea. His writings in the 1960s suggested that he, like Lynch, was examining the possibilities for the autochthonous adoption of constitutions at that time. Finally, the chapter provided evidence which suggested that Davidson may have been closely involved with the policy of Somare which resulted in the creation of the Constitutional Planning Committee.

The final contributing factor to the nature of Papua New Guinea's independence was the policy of acquiescence of the Australian Government. From the time of Menzies's "sooner

rather than later" comments in 1960, Australian Governments were conscious that their stewardship of the Territory was for a finite period only. Even under the conservative Government, which lasted until 1972, there was a belief that political developments in Papua New Guinea should depend on the people of the Territory themselves, while the new Government of Gough Whitlam was anxious to divest itself of its colonial responsibilities. This policy resulted in the situation where the Australian Government allowed Papua New Guinea to follow its own path of political development, especially in the last years of its administration of the Territory. This policy was supported by the commitment to independence of both the heads of the External Territories Department and the Territorial Administration.

These three factors - the push of nationalism, the guidance of expatriates, and the facilitation of the Australian administration - combined to create the unusual nature of Papua New Guinea's independence. As we have seen, Wheare had predicted in 1960 that new nations would increasingly proclaim their independence in a constitution "which they can claim owes its validity and authority to no outside country or

institution but to themselves alone."¹¹⁰, but - at least in the Commonwealth - it was not to be until Papua New Guinea gained its independence fifteen years afterwards that all the conditions for such an embodiment of autochthony were strictly fulfilled. The politicians who worked on producing the Constitution, conscious to ensure that their conclusions were grounded in the authority of the people themselves; the expatriates like Lynch and Davidson, committed to the idea of the new nation; and the willingness of the Australian Government, aware of what it considered to be its own proper role in the world, to allow the people of Papua New Guinea to name the terms for their independence; all combined to create a Constitution which embodied the principle of autochthony.

¹¹⁰Wheare, *Constitutional Structure of the Commonwealth*, p. 113.

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