Constitutional Reviews in Papua New Guinea and Solomon Islands

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Constitution making was an essential part of the process of decolonization in the South Pacific. Deliberations on constitutions and their progressive development as instruments of independence were, as in Africa, less a reluctant response to political pressures from nationalists than attempts by the colonial powers themselves to speed and control the process of decolonization. That the initiative remained, for the most part, with the colonial powers, had a significant effect on the process of constitution making and on the structure and contents of the constitutions. For example, it meant that the agenda and the parameters for the constitution were defined by the colonial powers. This did not preclude the participation of the local people and their leaders in the making of the constitution (indeed the constitution-making process in most places was highly democratic), but several factors conspired to make that participation more symbolic than substantive.

In Papua New Guinea and Solomon Islands, vigorous attempts were made to consult with the people, through questionnaires and tours of the country by committees set up to recommend on the constitution for independence. However, the choices offered to the people, derived largely from the experience of the colonial powers, were complex, and their intricacies probably beyond the comprehension of most people. While this consultation lent an aura of legitimacy to the constitution, it did not significantly influence its contents. With a few exceptions, political leaders, who were more actively involved in the process, had little experience of administration and were not able to foresee clearly the administrative implications of constitutional arrangements. Their knowledge of comparative constitutional systems was limited, and, as they had risen to emi-

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nence through constitutional arrangements sponsored by the colonial powers (themselves based on the home models), there was a predilection for the system they knew. Constitutional consultants, largely from outside, played an important role. Recruited so that they might enable local leaders to make their own decisions, they inevitably influenced these decisions, particularly, as in Solomon Islands, where negotiations with the colonial power formed a crucial part of the process of agreeing on the constitution. Constraints on the choices of the leaders were occasionally placed by the colonial power, more so in the case of Solomon Islands than Papua New Guinea. (See Ghai 1988*a* for a detailed discussion of these points.)

On the whole, the leaders and people of these countries took considerable pride in the formulation of their constitutions (and in Papua New Guinea there was much celebration of its "homegrownness" or autochthony). Nevertheless there was some uneasiness (at least in Solomon Islands) that the process had not been entirely voluntary and that its results might not be fully suitable for the new circumstances in which the country found itself. The notion that the final word on the subject of the constitution had not been spoken was explicitly acknowledged in the Papua New Guinea Constitution, which provided for its review three years after its adoption by a general constitutional commission (§260). It is therefore not surprising that both countries have undertaken extensive reviews of their constitutions. In this article I shall examine and comment on these reviews, after first providing a brief overview of the significance and the principal contents of the constitutions.

Independence Constitutions

The constitutions in both countries were based on westminster principles, under which the government is elected from and responsible to an elected legislature. An important difference from other westminster-based systems lay in the method of appointment of the prime minister, who is not appointed in the discretion of the head of state, but elected by the legislature itself, a response to both the underdeveloped state of political parties and the wish to enhance the role and authority of the legislature. The government can be dismissed only by a vote of no confidence by the legislature, and in the event of such a vote does not have the alternative of seeking the dissolution of parliament (except in the last six months of its life in

Papua New Guinea, when a dissolution is automatic). The head of state is the reigning monarch in the United Kingdom and is represented in each country by a governor-general, who, in another departure from the standard westminster practice, is in effect elected by the legislature for a fixed term. (The decision to keep a foreign monarch as head of state was controversial).

The electoral systems are based on single-member constituencies and plurality voting (that is, "first-past-the-post" system). Both constitutions establish or provide for a system of decentralized government, under which elected governments in the provinces enjoy considerable legislative, administrative, and financial autonomy; provincial autonomy is stronger and more securely entrenched in Papua New Guinea than in Solomon Islands. There are comprehensive provisions for human rights, which are enforceable in the courts, and Papua New Guinea also has directive principles of policy. The judiciary is independent, and mechanisms exist to safeguard the autonomy of the police and the public service in routine administration.

Despite consultation with the people and the active involvement of their leaders, the constitutions cannot be said to be rooted in indigenous concepts of power, authority, and decision making, for a number of reasons. These lie in the difficulty of expanding these concepts, which are peculiar to an island or group, to the national scale; in the constitutional evolution over several decades of colonial rule along Western lines; in the emergence to eminence of an educated, Christianized and Westernized elite with a loyalty to and dependence on modern state institutions; and in the influence of successive bureaucrats and consultants. With them, notions of economic development and state management of resources had primacy, militating against experiments in participatory democracy. For example, during the last stages of drafting the PNG Constitution, the expatriate draftsman, in conjunction with expatriate civil servants, made an important alteration to §148 so that ministers were not able to direct or control their civil servants (Ghai and Hegarty 1982).

It is easier to describe the outlines of the constitutions than to assess their significance, though certain statements may be made with some confidence. The constitutions provided, on the whole, acceptable frameworks for national unity and the exercise of public power. They served to integrate the countries, for there had not yet developed a nationalism that could be counted on to hold them together, fragmented as they were by

ethnicity and physical separation. Yet the integrative effect was incomplete, for the district of Bougainville in Papua New Guinea and the Western District in Solomon Islands refused to accept the respective constitutions, and removed their objections only after acceptable provisions for provincial autonomy had been conceded. The very process of constitution making, with committees traveling through the country canvassing views on important issues of public policy, had, almost for the first time, led to nationwide political discourse and had an integrative effect. The constitutions, with their provisions for liberal franchise and responsible government, conferred legitimacy on the state and its apparatus.

The constitutions established new frameworks for political competition. Because each was largely a westminster framework, with a premium on political activity organized along party lines, it was likely to have a significant effect on the development of politics—away, in the course of time, from locally based groups. Among other consequences, this would affect the relationship between the center and the regions. The democratization of state institutions would also affect political developments, leading to the concerns of governments and politicians to mobilize and maintain support. The way in which that support was mobilized and maintained would in turn influence economic development, as the state was likely to continue its role as the primary instrument of accumulation and reproduction. With the access of local people to political power, and through it economic power, a process of fairly rapid social differentiation and class formation was likely to be set in motion. However, the impact of the constitutions should not be overestimated, for the bureaucracy and its powers remained largely intact, and the underlying economic forces would determine rather than be ruled by the constitutional arrangements. Nevertheless, the constitutions opened up space for political and economic changes that would affect the destinies of these countries and were therefore likely to attract considerable interest and concern.

Constitutional Review in Papua New Guinea

In pursuance of the Constitution (§260) and the Constitutional Commission Act 1973, the General Constitutional Commission was set up at the end of 1978. Its primary responsibility was to enquire into the working of the Constitution and to recommend amendments to the Constitution or laws. The commission had nine members, drawn from both national and

provincial governments as well as from outside government; it was intended to be broadly representative of the different areas of the country and to give a balanced representation to the major political parties and groups in the National Parliament. Despite this nonpartisan approach, its membership, notably the chairmanship, was altered when there was a change of government following a vote of no confidence in July 1980. The commission issued two interim reports in 1979 and 1980 and the final report in 1983 (PNG-GCC 1979; 1980; 1983). The first interim report was intended primarily to provide a summary of the Constitution, of which the commission found wide ignorance among the public, while the second concentrated on a description of the systems of provincial and local government. The commission considered it premature to make recommendations on provincial and local government, which it proposed should be undertaken after three years. The final report contained the commission's analysis of the Constitution and its recommendations. The commission was concerned to seek the views of the public on the Constitution as widely as possible; it prepared summaries of the Constitution, promoted discussions groups throughout the country and prepared questionnaires to assist them, and toured all the provinces. It received several hundred submissions, although the response from educated and professional groups as well as from politicians was disappointing.

The commission was clearly disappointed by the lack of knowledge of the provisions of the Constitution among both the public and the politicians. It placed the major blame for this on the verbose and legalistic style of the drafting, and several of its recommendations were directed toward simplifying the language and shortening the length of the Constitution (the PNG Constitution is one of the longest in the world), as well as increasing popular awareness of the principles and substance of the Constitution. To that end, it recommended the repeal of the Organic Laws and their transformation into ordinary law. (Organic laws had themselves been introduced to keep the Constitution short, allowing it to be confined to basic principles and the establishment of key institutions. But the increasing distance—and mistrust—between the Constitutional Planning Committee [CPC] and the government of Chief Minister Somare led to the inclusion of more and more provisions intended for Organic Laws into the Constitution as well as to the entrenchment of the Organic Laws.) One implication of the recommendations of the commission, which it did not foresee, was that decentralization, which establishes the semifederal

nature of the Constitution, would lose its constitutional status because it is based essentially on the Organic Law on Provincial Government. The commission identified decentralization as one of the successes of the constitutional and political system and recommended strengthening it.

There is nothing to indicate that the commission was other than unanimous. On the whole the report is an endorsement of the Constitution. Where it does recommend an amendment, it is frequently to give greater effect to the intention of the Constitution or the views of the CPC, as with the national goals and directive principles, or national economic autonomy. The framers of the Constitution had tried to establish those principles and chart the path of development, based on a mixture of humanism, participatory democracy, and nationalism. The commission, realizing that the attempt had not been successful, since corruption and income differentials were increasing, recommended strengthening the provisions for implementation of the principles. Hitherto they had been nonjusticiable, but the commission proposed that they should become legally binding and that noncompliance with them should lead to dismissal of the government or persons in authority (1983, 17). It also proposed that the application of the leadership code (which restricts and regulates commercial activities and conduct in office of state officials) should be extended to bring further categories of officials under its regime, and that the Ombudsman Commission should be given increased powers of investigation and prosecution. The nationalist orientation of the commission found expression in proposals for various restrictions on the rights of naturalized citizens (45); for the redistribution to "the original owners" of land held by nonresident foreigners (33), and for the incorporation of larger elements of custom in the national legal system (278–279).

The commission made several recommendations to bolster the protection of human rights. It wanted the abolition of the death penalty and the implementation of the right to official information already guaranteed by the Constitution. It recommended simplifying as well as tightening the emergency laws, and said that these laws should not be used to deal with tribal fighting (as had occurred in the 1970s) except in dire circumstances. It urged that the powers and resources of the public solicitor should be increased. The training of the police force should be improved so that it respects rights of citizens to a greater extent than it has so far (227), and the quality and independence of constitutional office holders should be enhanced (264–267). Unfortunately the commission (as with the commit-

tee in Solomon Islands) was unable to extend the same concern to naturalized citizens (operating on the premise that these citizens abuse their status to the detriment of indigenous people). It proposed that such citizens should not be eligible for public office unless they had resided in the country for twenty years; and that the spouses and children of naturalized citizens themselves should have to apply for citizenship within twelve months of the adoption of its report. Naturalized citizens should not have any business interests outside Papua New Guinea and would lose their citizenship if they "abuse or misuse" their citizenship or divorce themselves from the customary obligations of the community into which they have been adopted or abuse or breach its custom. It recommended a moratorium of fifteen years on further grant of naturalization, during which a review of nationality law would be made.

The commission was in general in favor of decentralization, but refrained from a detailed analysis of or recommendation on the subject as it felt that the time was not yet ripe for a review. Moreover, the commission endorsed the recommendations of a wide-ranging review of the financial aspects of provincial government that had already been conducted (although the report of the financial review committee was confused and inconclusive). However, the commission made some recommendations to strengthen the autonomy of the provinces, particularly from national politicians, and to increase their legislative powers through delegation or the repeal of national legislation in concurrent areas. It also suggested that a committee rather than a portfolio system (which all provinces have adopted under the power given to them under the Organic Law on Provincial Government) would be more suitable for government at the provincial level.

The commission made a number of recommendations on the system of government. It proposed the rejection of dominion status under the British Queen in favor of a republic under an indigenous, largely ceremonial, president. The mode of election and functions of the president would follow closely the present provisions for the governor-general, except that the president would be required to be at least 45 years of age and would enjoy a five-year term (reduced from the present six years). The president should have certain discretionary powers that would relate to the dissolution of the legislature and the proclamation of an emergency. At present no discretionary powers to speak of are provided for, the governor-general being required to act on the advice of the government or other speci-

fied body (see Ghai and Cottrell 1990). It is clear that the commission wanted the president to have the right, on personal discretion or on the advice of the government, to declare an emergency, but it is not obvious whether the advice, if actually given, would be binding (78). That the president would be expected to exercise some kind of umpiring function emerges from the recommendation that the president should be able to dissolve parliament if "there is an urgent crisis in government" (86), a term that is defined as "(a) widespread corruption and injustice in the National Government, or (b) continual widespread industrial unrest within the Public Services, or (c) the National Parliament is not able to meet within a given time, after the Speaker has called a meeting, because of party conflicts, nation-wide industrial unrests or strikes, or (d) the Constitution is under extreme pressure from the Government causing widespread uprising, strikes or revolts" (95). These criteria are not precise, nor do they always constitute justifiable grounds for dissolution—rather than, for example, removing the government in (a) or disciplining public servants in (b). In some circumstances dissolution, as a result of which the country would be without a parliament for a considerable period, might aggravate rather than solve the crisis. The wide (and crucial) discretion this proposal would give the president is balanced by two proposed safeguards: the discretion would come into play only if parliament had not tried, or had failed, to pass a resolution to dissolve parliament (§105[1][c]) as a way to solve the crisis; and a committee composed of the president, the speaker of parliament, and a former chief justice ("the Dissolution Committee") had declared in favor of dissolution.

It is probable that, as in Solomon Islands, the recommendation to give these discretionary powers to the president sprang from the view that the present provisions are inadequate to deal with situations of deadlock or crisis, which might be resolved by either the dissolution of parliament or the removal of government by the head of state. The commission makes another proposal to deal with these situations: the president should have the power to dissolve the parliament if it defeats the government on a question that the prime minister has declared is a matter of confidence. At present the only outcome of such a vote is that the government has to resign (unless the vote is in the last year of the life of parliament, when automatic dissolution follows). This proposal might be useful to restore the balance between parliament and the executive, which some former prime ministers consider is weighted against the executive (Chan 1988;

Kenilorea 1983). Unfortunately the commission's recommendation on this important point (96) does not state clearly what is to happen to the present provisions on the consequences of a vote of no confidence or how the president's discretion is to be exercised. For example, is it to be exercised on the advice of the prime minister or after consultation with the Dissolution Committee?

Various other proposals of the commission, concerned with the stability of governments, relate to the relationship between the executive and parliament. The commission would not allow a motion of no confidence within twelve months of the formation of a government, and even at other times such a motion would only be permitted if it had the support of one quarter of the members of parliament. On the other hand, contemplating the possibility that strong party loyalties might keep a bad government in power, the commission recommended that when a vote of no confidence is moved for a second time, whether unsuccessfully or not, in the last twelve months of the normal life of parliament, automatic dissolution should follow (146). There is no guarantee that it is only against bad governments that motions for such votes would be introduced. The proposal would effectively give the opposition, provided it had the support of a quarter of the parliament, the power to cut short the term of the government, and would in practice frequently reduce the life of parliament to three years, since the commission recommended a normal life of four years.

In fact, the commission did not think the development of such a degree of party solidarity was imminent (indeed the contemporary problem is weak party discipline and loyalty), as appears from another of its recommendations to ensure stability: parliamentarians would lose their seats on certain changes of party allegiance. Members who changed their "party alliance" or voted against their own party within twelve months after a general election, would lose their seats, as would members who changed party alliances more than three times after the first twelve months following a general election (117). It is not entirely clear what the commission means by "party alliance"; it could mean allegiance or refer to an alliance formed by the member's party with another political group. If the latter (which is the less plausible interpretation), it would be a serious derogation from the rights of a parliamentarian, especially if the alliance were agreed *after* the elections. Presumably the leaders of the alliance would be free to break it up without incurring a penalty, for otherwise the system of coalitions would become very rigid.

Although these changes would tend to stabilize the executive, the commission was clearly anxious that this should not weaken parliament. The commission made recommendations to "improve" the moral and intellectual quality of parliamentarians, including a proposal under which a member would be disqualified on grounds of alcoholism or illiteracy (115–116), and there would be a greater control and scrutiny of the finances of political parties (124–125). The commission urged a more active role for parliamentarians in policymaking and monitoring of the executive through a strengthening of the committee system, which has so far failed to discharge the tasks envisaged for it by the CPC (121–124). The commission recommended the abolition of the provision for nominated members (which has never been used) as well as of the provincial constituencies (whereby each province elects a member on a single provincewide constituency), as having outlived their rationale (112–113). The commission approved of the first-past-the-post system of voting, but recommended that voting be made compulsory, and proposed that parliament should be convened within seven days of the holding of general elections (as opposed to the present maximum of twenty-one days, during which party leaders seek coalition partners—sometimes through various questionable methods—and a defeated government stays in office).

Constitutional Review in Solomon Islands

In February 1987 Prime Minister Ezekiel Alebua appointed a committee to review the Constitution and report to the government by 31 July 1987. (The committee was not in fact able to report until January 1988.)

It is not obvious from the report why it was considered necessary to review the Constitution. In July 1982, when Solomon Mamaloni was prime minister, he had appointed a committee to review the Constitution (Larmour 1983, 262). Mamaloni himself had taken no part in the preparation of the independence Constitution (being out of the legislature), although he had had considerable influence on constitutional development up to then. It was known that he was critical of some aspects of the Constitution, in particular the degree of centralization of power. The terms of reference of the 1982 committee were quite specific; it was to propose a "quasi-federal" system of government and to provide for an executive president, with powers to dissolve parliament or dismiss the prime minister during political crisis or stalemate and to command security and

defense in time of emergency. The committee consisting of seven members of parliament and three national lawyers, including the attorney-general, was chaired by Andrew Nori, who was the secretary-general of the People's Alliance Party, to which Mamaloni himself belonged. The committee made some progress but was overtaken by the general elections of 1984 when Mamaloni's government fell. The new prime minister, Sir Peter Kenilorea, as chief minister had played a key role in the drafting of the independence Constitution and appears to have been less interested in a review, although he was not happy with some aspects of the Constitution (Kenilorea 1983, 53–62).

In recognition of his special interest in constitutional matters, Alebua appointed Mamaloni, now the leader of the opposition, as chairman of the committee. Other members were five other members of parliament, including Deputy Prime Minister Kenilorea and Nori, now minister of home affairs, one businessman (a former minister), and one representative each for the churches and for women.

The terms of the review were broad and did not give any guidance to the committee. After extensive travels in the country and wide consultation with the people, the committee produced its report in the form of two alternative recommendations. The report does not make clear the preference of the members themselves or indicate whether the committee was divided in its opinion. Therefore no guidance is offered either to the public or the government about the choice between two quite different sets of proposals, a choice that is rendered even more problematic because the reasons for the proposals are not clearly stated. It does seem that the committee was divided and that the first alternative had the support primarily of only Mamaloni. Proposals under each of the alternatives are set out in considerable detail, but no systematic justification for them is provided, so that it is not generally possible to say what defects of the present constitution they are a response to. The committee has included a paper in which it analyzes the defects of the Constitution (Background Paper No. 6 in Volume 2); that analysis is relevant to Recommendation 1 rather than Recommendation 2. In any case, as I argue later, that analysis is related less to the provisions of the Constitution than to national development policy.

Proposals under Recommendation 1 are more interesting than those under Recommendation 2, but perhaps they are also less practical. They suggest major changes in the present system, whereas Recommedation 2

accepts its principal features. Recommendation 1 proceeds on the premise that many of what it regards as the ailments of the country—elitism, unfair distribution of benefits, dependence on the outside world, the expanding role of the state and the limited growth of the private, indigenous sector, and the narrow base of the economy—are the result of the Constitution. These can only be remedied if the Constitution is based on new principles, of which three stand out.

The first is the acknowledgment of the ethnic and cultural diversity of the people through a thoroughgoing decentralization. The country would be divided into a number of states in a federal relationship with the national government; they would be free to devise their own constitutions, and their legislative, financial, and administrative powers would be entrenched in the Constitution. The governors of the states would also have important roles at the national level. A national fiscal commission with representation from both the center and the states would decide on important aspects of financial policy and the allocation of grants to the states. Each state would have its own public service.

The second principle is the primacy of custom and indigenous authorities over Western-type institutions. Consequently there would be a gradual elimination of the received common law by customary law, and more and more disputes would be channeled to customary tribunals that would be set up. Each state would have a council of chiefs that would elect its governor and have advisory as well as executive functions, the latter to include veto on various categories of legislation. Traditional chiefs would also be appointed to the national congress of governors, with functions at the national level similar to those of the council of chiefs. Only persons of "chiefly lineage and blood" would be eligible to become state governors. The bill of rights would be modified to recognize the collective rights of clans, and jurisdiction over land would be transferred from the state to the clans.

The third principle is the paramountcy of indigenous Solomon Islanders. They would enjoy rights superior to those of citizens who acquired their nationality through naturalization or registration, and the latter would be liable to lose their citizenship more easily than at present. Only an indigenous Solomon Islander would be eligible to become president. The Constitution would authorize discrimination in favor of indigenous people in a variety of areas—property, loans, education, land, commercial licensing, and public service. The president would be granted special powers to ensure privileged treatment of indigenous people.

The other major proposal under Recommendation 1 is the establishment of a republic under a president who would normally be required to act on the advice of the cabinet but would have more powers than the present governor-general. The president would have the right to refuse a request for the dissolution of parliament; and might dissolve parliament on personal discretion if the government lost the budget or there was a vote of no confidence in the government. It is implied rather than stated that the president could veto legislative proposals passed by parliament. The president would need to consult with or have the approval of the congress of governors in the discharge of some presidential functions, including assent to specified categories of legislation. Although many detailed proposals are concerned to weaken the state and elitism, a few go in the opposite direction. The offices of the ombudsman and the public solicitor (to provide legal advice to those who cannot afford it) would be abolished, as would the leadership code that aims to prevent corruption and the abuse of office. More important, legislation against acts prejudicial to public order would be strengthened and immunized from legal challenge for breach of human rights, and emergency powers, to be vested in the president, would not be capable of being questioned in court.

Under Recommendation 2, the basic principles of the independence constitution would remain. Solomon Islands would stay a unitary state, although more (but unspecified) powers would be devolved to provinces, within a legislative rather than a constitutional framework. The major changes proposed include the establishment of a bicameral legislature, the replacement of the Queen with an indigenous (but largely ceremonial) president, and some aspects of the relationship between the prime minister and the cabinet. The lower house of the legislature (the House of Representatives) would be popularly elected on a system currently in force for parliament, while the Senate (membership of which would be restricted to indigenous Solomon Islanders) would have a mixed legislature to represent chiefs and traditional leaders, ten appointed by the president from persons of high standing in the community, eight appointed by the prime minister, and six by the leader of the opposition. The Senate would have the right to review certain legislation, primarily that relating to finance, natural resources, and custom, but its rejection of it could be overridden by a three-fourths vote in the House. Alterations of the important provisions of the constitution would be done in a joint sitting of the two chambers.

The powers of the president would be similar to those of the governor-

general, except in one important respect—the president would be able to remove the prime minister if the latter lost the support of the ministers.

Several proposals would affect the system of cabinet government. It would be possible to appoint to the cabinet persons not members of the legislature—a departure from the parliamentary system of government—although the cabinet would remain collectively responsible to the legislature (the expression used is parliament, presumably meaning the elected House of Representatives). Two somewhat contradictory provisions would govern the relationship of the prime minister to the cabinet. On the one hand, the prime minister would be able to direct the other ministers in the administration of their departments in line with government policy—no doubt as a means to check wayward ministers, a not uncommon phenomenon, but with implications for the role of the cabinet. On the other hand, a prime minister who fell out with the ministers would be liable to removal by the president. In a system dominated by coalition governments, such a provision could contribute to further political intrigue and instability, but more important, its fundamental principles seem to be suspect. It is after all the prime minister who is elected by parliament and who has a mandate from parliament to form a government; other ministers hold office at the pleasure of the prime minister. If the legislature wishes to bring the government down, it is through a vote of no confidence in the prime minister. The removal of the prime minister through a vote of no confidence would become more difficult, undoubtedly in an attempt to promote stability of governments: the resolution of no confidence would name the alternative prime minister; it could not be moved within six months after the election of the prime minister, within six months before the dissolution of the legislature, or within three consecutive meetings of parliament after the previous resolution. As in Recommendation 1, the posts of director of public prosecutions and public solicitor would be abolished—and Solomon Islands would become a Christian republic, although neither proposal spells out the implications of this recommendation.

Conclusions

Given that both reviewing bodies were made up predominantly of politicians, it is surprising that they did not undertake an analysis of the effects of their respective constitutions on political developments since indepen-

dence as a basis for evaluation and amendments. It may well be that their consideration of the constitution was determined by their opinion of these consequences of the constitution, but that these are assumed rather than articulated. The reports, particularly that of Solomon Islands, frequently do not provide a clear rationale for the recommendations, so that it is not always easy to understand the thinking of the reviewing body. The approach of both bodies has been a textual analysis, chapter by chapter. The one exception to this is the text accompanying Recommendation 1 in the Solomon Islands report, which attributes, in general and sweeping terms, several consequences to the Constitution. However a closer analysis would make the argument difficult to sustain, because they are more the consequences of the policies of various governments in no way dictated by the Constitution. The text accompanying Recommendation 1 also attempts an analysis of the circumstances of the country, particularly the ethnic diversity of the people and the value of their cultural traditions, as a basis for new constitutional arrangements. The text consequently produced, as we have seen, proposals for a federal system with an eminent position for traditional leaders and custom.

Although there is no explicit discussion of the role of either constitution, it is clear that both review bodies proceeded on an assumption of the efficacy of the constitution in effecting relationships and behavior, even though the commission in Papua New Guinea concluded that the independence Constitution has failed in many of its goals. Both professed the pre-independence belief in the effectiveness of the constitution, but it is doubtful if many outside the review bodies now share that belief. The PNG commission found not only widespread ignorance of constitutional provisions, but also apathy on constitutional issues, even among senior politicians and public servants (Deklin 1988, 348). It was certainly not easy to get Parliament to discuss its report; there was some discussion in 1983, and then none until 1987 when the report was "approved" with some changes. Six years later, no action has been taken on it. Perhaps people feel that the Constitution is not central to economic and social processes. The review bodies have done little to explore the relationship of the constitution to these processes, and they provide little reliable evidence of the effects of independence constitutions. If they had done research on these effects, they might have been in a better position to appreciate the limits of the constitution. As it is, they, particularly the commission, state that if people had greater awareness of the provisions of the constitution, all would

be well. As a result, they totally ignore the autonomous effects of the unfolding of economic and social processes, and run the danger of appearing rather quixotic, tilting at economic windmills with reeds of paper. For example, the proposals of the commission, about the dismissal of ministers and officials for breach of national goals, fly in the face of past practice and disregard the dynamics of capitalist development in Papua New Guinea, reminding one of the optimism of the Spanish knight.

Another difficulty with both reports is that they do not set out, except incidentally, how one is to measure the success of the constitution. The sole criterion appears to be, What do the people think? This populist approach is a carryover from the pre-independence era when it was right and proper that the people should be closely involved in the decisions on the constitution. Even then, the effect was less to determine the contents of the constitution than to legitimize it (Ghai 1988*a*, 46–51). But it is doubtful if that is a proper approach for an expert body set up to review how a constitution has operated. It is of course important to consult public opinion, but unwise to make that the sole basis of evaluation. The public is unlikely to be knowledgeable about many key aspects of relationships and developments that the constitution seeks to regulate. Nor was the basis of popular consultation such as would elicit the response of the public to these aspects. Consultation was directed toward asking the people what kind of constitution they wanted, rather than what they thought of the present one (although I realize the two questions are not unconnected). It could be argued that the place of popular consultation was at a later stage, once the committee had presented its expert and technical evaluation to the government and parliament and before amendments were enacted. (This view differs from that of a key member of the commission who thinks its function was to establish public opinion on constitutional changes and questions the right of parliament to disregard its recommendations [Deklin 1988, 346–347]). Otherwise the functions of the review body and those of the government and parliament become blurred, and the advantages of specialization are lost. Either way, it is far easier to find public opinion on the basis of specific proposals than in the abstract. It is not entirely surprising that in both countries the greatest interest was shown in the issue of the head of state, whose constitutional as opposed to symbolic significance (given the continuing commitment to the westminster model) was slight.

How then does one assess the record of a constitution in developing

countries like Papua New Guinea and Solomon Islands? One test would be the contribution the constitution makes to national unity. Both countries withstood threats of secession at the time of independence, and there appeared only a fragile basis of unity. Yet the constitutions did eventually provide solutions, primarily through decentralization, but also through the establishment of national institutions and an electoral system based on universal franchise, providing a framework for political decision making and competition. Another test might be the ease with which the constitution enabled the transfer of power and the assumption of control over the state apparatus by the local leaders. Has it established institutions whose functions in resolving controversies and crises are accepted as legitimate by the people? Has the constitution succeeded in regulating the relationship among the different organs of the state and effectuating the values it espouses? Does it provide sufficient security to individuals and communities and secure the rights of the citizen? Does it provide a framework within which democratic values and practices can be pursued? Has it enabled stability in government and administration? What effect does it have on economic development and equality and balanced development?

These are broad questions, and there is no easy or reliable methodology for answering them. In another place my attempt to examine the political consequences of constitutions in the Pacific Island states (Ghai 1988*b*) throws some light on some of these questions, and some of my conclusions would be relevant to a review of a constitution. The westminster system in Papua New Guinea and Solomon Islands has operated without strong, well-disciplined parties, to the extent that not a single party has so far been able to form a government on its own. The coalition governments that result do not produce stable government with a firm control over the legislative process. A great part of the time of the prime minister is spent on managing the coalition, which is constantly threatened by the competition for ministerial office among parliamentarians and given wide rein by the rules whereby a vote of no confidence leads to a change of government and not to the dissolution of parliament. Collective responsibility is difficult to maintain under these circumstances, especially when coalitions are based not on common policies but on an interest in the perks of power. Political stability is constantly threatened, for at the first whisper of a conspiracy toward a vote of no confidence, normal executive and legislative functions are immobilized, as the prime ministers and their rivals go about mustering parliamentary support. Corruption and patronage are the natu-

ral results, while the political system becomes discredited. Coalitions are formed after elections rather than before, so that differences of policy emerge during the term of office of a government and not at its formation. The westminster system leads to a confrontational and adversarial style of politics, and downgrades the search for consensus. Deadlocks cannot easily be resolved. The electoral system, based on first-past-the-post votes and single-member constituencies, contributes to the multiplicity and weakness of parties. By encouraging wide candidature and having the ability to ensure victory on the basis of a small percentage of the total vote, it weakens the control of the party leaders over its politicians, and produces members who command no particular support in their constituencies.

Both reports address some features of the political system just described. However, they accept the basic principle of the westminster system, ruling out an executive presidential system and its opposite, the committee system of government. They do not question the electoral system, particularly first-past-the-post voting. Both are concerned to provide some machinery to resolve political deadlocks, primarily by giving certain discretionary powers to the president—to remove the government or dissolve parliament—thus approximating the norms of the older westminster system. However, the president's discretion is to be subject to advice from a body of eminent persons.

To ensure the stability of government, both seek to restrict as well as place additional hurdles on votes of no confidence. There is great concern to relax the stranglehold that the backbenchers are perceived to have on the government through their willingness to vote for no-confidence motions. The result of a successful vote is a change of governments, there being no mechanism (except in the limited circumstances outlined for Papua New Guinea) for the dissolution of the legislature. Many proposals have been made for automatic dissolution in the event of a vote of no confidence as a way to induce circumspection in parliamentarians anxious about their own privileges. It is significant that more governments have been displaced by votes of no confidence than by the verdicts of the electorate. The PNG commission has attempted to ensure stability also by providing for the disqualification from membership of a parliamentarian who is inconstant in allegiance to a political party. The Solomons committee has sought to resolve deadlocks within the administration by giving ministers the right to get rid of the prime minister who appointed them in

the first instance. These proposals might help, but they might also aggravate the problems, and I have already commented on some of them. It is doubtful whether they go to the root of the problem, which is found in a particular conjunction of the westminster model with a particular party system promoted by the specific electoral system.

Some other aspects of the reviews may be briefly commented on. They show a continuing obsession with immigrants, even those who have become naturalized citizens. It is hard to believe that the proposals respond to any real problem, though the economic and political dominance of (minute) immigrant communities is perceived as a problem. Particularly fanciful are proposals to protect the indigenous people in Recommendation 1 in the Solomons report. To the proposal that naturalized citizens should not qualify to be parliamentarians or hold senior positions in the public service, one can only riposte, How many such citizens occupy these positions? One does not have to deny that no naturalized citizen has abused this status to decry the racism that motivates these proposals, especially as both review bodies are anxious to accommodate ethnic diversity among their indigenous people.

Decentralization, a direct response to this diversity, continues its hold on the political imagination (although ironically, the only overt use the PNG government has made of the review is to attack provincial government by endorsing the proposal to abolish the status of Organic Laws, which would remove the entrenchment provided to decentralization [Ghai and Regan 1989]). It is unfortunate that neither report discusses the numerous political, administrative, and financial problems that have arisen from decentralization. Their proposals on the subject, particularly those in the Solomons Recommendation 1, must therefore be treated with considerable caution. The solicitude for human rights in the Papua New Guinea report may be compared with a somewhat cavalier attitude in the Solomons report. Surprisingly, neither report has much to say on land, given the heated controversies that subject raised in the run up to independence. The problem of land has not gone away, but it may have been felt that it is not profitable to handle it through constitutional norms.

One must conclude that the value of the reviews is limited, and one may question the recommendation in the PNG report that such periodic reviews must become permanent. One difficulty with both these reviews is that at the time they were carried out no pressing problem had arisen that required a constitutional settlement; in both countries constitutions have

been amended on a number of occasions as the need for specific changes became evident. Nor had the existing constitutions led to any real crisis. On the whole they have worked with remarkable success, have promoted democratic practices, ensured orderly transitions of governments, safeguarded citizens against official arbitrariness, and preserved national unity. The political instability produced by electoral and party systems and the motions of no confidence is the instability of governments, not of the country or its policies. There are no serious differences of policies among the parties or factions. Both countries are embarked on the capitalist path to development, whose resilience is unaffected by rotations in the incumbent prime minister. It is therefore not surprising that the reviews failed to arouse any enthusiasm. Even where there has been support for particular proposals, a sufficient degree of parliamentary support has not been forthcoming since few parties have been able to divorce the justifications for change from the advantages it would bring to the incumbent prime minister. It would be wrong to feel an obligation to be bound by the constitutional shackles of the past, but the lessons of the two reviews may be that a review is pointless in the absence of a general feeling that something is seriously wrong with the constitution or that a fundamentally new constitutional settlement is necessary for the preservation or the renewal of the national spirit.

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