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11. 'Australia as Empire'

Miranda Johnson and Cait Storr

Introduction: Australia as product and agent of empire

Australia is both a product of the British empire and an agent of empire. Through much of the twentieth century, the country was an imperial power in the South Pacific, the Southern ocean, and even the proximate Indian ocean. However, the rights and responsibilities that flow from empire are commonly ignored or forgotten by Australian citizens today. Indeed, there are few scholarly considerations of the *legal* history of Australian empire.[1]

Telling a story of Australian empire troubles conventional narratives of nationhood premised on an expansion outwards to the natural limits of the continent, by tracing Australia's multidirectional imperial interests in its contiguous seas.[2] The establishment of Australia as a new power in the Pacific region, in particular, throws light on the imperial dimensions of Australia's self-realisation as a sovereign state, a fact that is often obscured when the making of the country is considered primarily in terms of its vertical relationships to Britain or the United States.

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[1] Antony Anghie, 'Race, Self-Determination and Australian Empire,' *Melbourne Journal of International Law* 19(2) (2018), 423 – 461. Marilyn Lake, 'The Australian Dream of an Island Empire: Race, Reputation and Resistance', *Australian Historical Studies* 46 (2015), 410 – 424.

[2] Howitt argues that federation-era Australians bore a 'remarkably oceanic understanding of space'. Rohan Howitt, 'Ideological Origins of the Australian Antarctic, 1839 – 1933' (PhD thesis, Department of History, University of Sydney, 2019), 327. On Oceania as an interconnected space of Indigenous life, thought, and action, see Epeli Hau'ofa, Vijay Naidu and Eric Waddell (eds.), *A New Oceania: Rediscovering Our Sea of Islands* (Suva: University of the South Pacific, 1993).

The colony of New South Wales was involved in complex—if later obscured—diplomatic and legal relationships that extended far beyond the continent's shores. As the Australian colonies grew in population and wealth, the balance of regional power shifted markedly. At the end of the nineteenth century, federation manifested a shared colonial ambition to secure Australia's regional supremacy against the perceived incursions of competing European empires. This ambition was realised through the acquisition of extensive territory in Papua and later New Guinea, in the destructive exploitation of resources and labour in Nauru, as well as in claims to Antarctica and islands in the Southern ocean.

Foregrounding Australian imperialism therefore subverts the dominant narrative of twentieth century Australian legal history as a gradual deconstruction of a (British) imperial project, or 'dedominionization'.[3] Instead, we propose that 'Australia' is a phenomenon constructed and maintained through ongoing assertions of the authority to define place and person, across a region that exceeds territorial and racial borders. The consolidation of this imperial project has long been concerned with the making and maintaining of whiteness, white space, and white entitlement. This racialisation continues to evolve, rename, and re-assert itself in new ways in a wide range of legislative and administrative techniques for constructing territories and persons.

The legal tools of Australian empire have included direct assertions of territorial jurisdiction; shifting constructions of territorial inclusion and exclusion, such as the territorial sea and the maritime migration zone; assertions and protections of rights in natural resources, both within and

[3] Kosmas Tsokhas, 'Dedominionization: The Anglo-Australian Experience, 1939 – 1945' *The Historical Journal* 37(4) (1994), 861 – 883.

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beyond 'sovereign' borders (for example in the Greater Sunrise Basin, and in relation to Australian mining interests in Papua New Guinea and Nauru); the implementation of differential citizenship rules, specific labour migration regimes and visa programmes; and constantly shifting constructions of Indigeneity. Though often destructive, Australian empire was not totalising. Indigenous laws challenged imperial jurisdiction, and their recognition and institutionalisation became a matter of critical debate in the independence constitutions of the later twentieth century.

Colony, empire, and the Pacific in the nineteenth century

From its beginnings, the colony of New South Wales was entangled in webs of interdependency with Pacific peoples and resources. The early nineteenth-century 'salt-pork trade' with Tahiti, for instance, entailed varying and fluid negotiations of laws and the recognition of Indigenous sovereignty.[4] Even by the end of the nineteenth century, as colonies asserted their power and dominance in the region, colonial Queensland's sugar plantations were dependent on cheap, indentured labour of Pacific Islanders for achieving considerable profits.[5] The initial dependency of the tiny convict settlement on the edge of a vast continent was not, however, admitted in founding documents that extended British authority over 'all the Islands adjacent in the Pacific'. In his 1787 commission as governor-in-chief of New South Wales, Arthur Phillip was enjoined to establish as quickly as possible a settlement at Norfolk Island 'and prevent its being occupied by

[4] Alecia Simmonds, 'Cross-Cultural Friendship and Legal Pluralities in the Early Pacific Salt-Pork Trade,' *Journal of World History* 28(2) (2017), 219 – 248. Vanessa Smith, *Intimate Strangers: Friendship, Exchange and Pacific Encounters* (Cambridge University Press, 2010).
[5] Kay Saunders, 'The Workers' Paradox: Indentured Labor in the Queensland Sugar Industry to 1920,' in Kay Saunders (ed.), *Indentured Labour in the British Empire, 1834 – 1920* (London: Croom Helm, 1984), 213 – 259.

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the subjects of any other European Power.'[6] What the historian J.M. Ward later called the 'adjunct policy' did not, in fact, have immediate effect but the instructions did establish that the new convict colony's future was as much, if not more, oriented sea-wards as it was towards the vast interior, as yet unexplored and uncharted by Europeans.[7]

Australian elites would come to see themselves as 'masters of the Pacific'.[8] However, there was nothing inevitable about the transformation of colonies of convict and, later, free white settlers into a regional imperial power. The pre-history of formal Australian empire is littered with thwarted plans and stymied political desires. Furthermore, unlike the independent United States on whom Australian imperialists at times modelled themselves, the Australian colonies could not engage in foreign diplomacy or annex territory in their own name.

The piecemeal incorporation of the Torres Strait islands into Queensland's jurisdiction required Imperial approval. The most proximate of these islands (those lying within a three-mile limit from the continent's shores), including Thursday Island where a magistrate was stationed, were incorporated under Queensland's jurisdiction through an argument for 'adjacency' based on the opinion of Imperial law officers in 1863. In 1872 that limit was extended to sixty miles offshore and, in 1879, all islands of the Torres Strait were annexed to Queensland by Letters Patent and confirmed by colonial legislation.[9] Notably, official discourse asserted the 'urgent need' to protect

[6] Arthur Phillip's Second and Permanent Commission, 2 April 1787, *Historical Records of Australia*, 1st series, vol. 1, 2.
[7] J. M. Ward, *British Policy in the South Pacific: 1786 – 1893* (Sydney: Australasian Publishing Co., 1948).
[8] Alfred Deakin quoted in Geoffrey Serle, 'The Victorian Government's Campaign for Federation, 1883 – 1889' in A. W. Martin (ed.), *Essays in Australian Federation* (Melbourne: Melbourne University Publishing, 1969), 31.
[9] R. D. Lumb, 'The Torres Strait Islands: Some Questions Relating to their Annexation and Status,' *Federal Law Review* 19 (1990), 154 – 168.

island inhabitants from white traders and others. Those living within the sixty-mile limit automatically became 'natives of Queensland'. Yet, at this time, no specific legislation regulated Indigenous peoples on the mainland; according to one historian, the 'least influential' motivation for annexation of the islands was protection of Torres Strait Islanders.[10]

In the late 1860s, some Sydney colonists began to articulate an expansionist policy in the Pacific, notably in relation to Fiji where new cotton plantations were booming. Arch imperialists commonly invoked an 'Australasian Monroe Doctrine' to assert British rights in the South Pacific, in competition with French and, later, German imperial expansion.[11] But whereas the 1823 Monroe Doctrine declared the United States' economic and diplomatic primacy in Latin America to the exclusion of all other imperial and colonial interests, Australian Monroeism was consistent with Australia's membership of the British empire. It gave rise to experimental formulations of sub-empire, or *imperium in imperio*, as political ideology and as constitutional structure.[12] The limits of sub-imperial power were strikingly demonstrated by Queensland's attempted annexation of the eastern half of the island of New Guinea on 4 April 1883, purportedly in response to a German newspaper report of impending takeover. The British Imperial government refused to recognise Queensland's claim on ground that the added expense was unnecessary, as there was 'no reason for supposing that the German Government contemplates any scheme of colonisation'.[13] The

[10] Steve Mullins, 'Queensland's Quest for Torres Strait: The Delusion of Inevitability,' *Journal of Pacific History* 27(2) (1992), 165 – 180.
[11] Roger C. Thompson, *Australian Imperialism in the Pacific: The Expansionist Era, 1820 – 1920* (Melbourne: Melbourne University Press, 1980).
[12] Cait Storr, ''*Imperium in Imperio'*: Sub-Imperialism and the Formation of Australia as a Subject of International Law', *Melbourne Journal of International Law* 19(1) (2018), 335 – 368.
[13] J. L. Whitaker, N. G. Gash, J. F. Hookey and R. J. Lacey (eds.), *Documents and Readings in New Guinea History: Pre-History to 1899* (Milton, Queensland: Jacaranda Press, 1975), 478.

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colonies reacted strongly to the Imperial government's refusal, and the 'Australasian Convention on the Annexation of Adjacent Islands and the Federation of Australasia', later known as the first Federation Convention, was held in Sydney in November and December 1883, to formulate a collective response. In an attempt to placate the colonies, the Colonial Secretary, the Earl of Derby, promised to extend the consular jurisdiction of the British High Commission of the Western Pacific over British subjects in New Guinea.[14]

The 'New Guinea crisis' highlighted two major factors in the development of Australian statehood: first, that the 'self-governing' Australasian colonies had no legal control over their 'external sovereignty', nor capacity to enter into treaties of commerce and defence; and second, that the colonial perception of their own strategic interests in the Pacific region was beginning to diverge from that of the Imperial government. The formation of an 'Australian' state required articulation not only of the legal bases on which the colonies would federate, but also of the relationship of that federation to the British empire. Over the 1880s and 1890s, the Federation Conventions provided an intercolonial forum for negotiation of the former; and the Colonial Conferences, held between the Imperial government and the self-governing Dominions, an intra-imperial forum for the latter. These debates repeatedly returned to the issue of establishing a legal basis for Australian annexation of islands in its own right.

The Imperial government was largely receptive to internal federation of the self-governing colonies but continued to insist that in a context of increasing global tensions, its retention of

[14] Thompson, *Australian Imperialism*, 51.

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external affairs powers was vital to the integrity of the British empire. In 1884, following German corporate expansion into northern New Guinea, Britain and Germany agreed to the establishment of the protectorate of British New Guinea over the southeast of the island, and the protectorate of German New Guinea over the northeast. There was also a struggle with the French for supremacy over the New Hebrides (now Vanuatu), a significant labour-recruiting ground for European trading firms in the Pacific. In scientific expeditions, Australians sought to extend their influence in the Southern Ocean and over Antarctica.[15] At the same time, at the Federation Conference in 1890, the colonies of New Zealand and Fiji (the latter by then a British protectorate) were formally invited to join an 'Australasian' federation.[16] Both ultimately declined, though the Commonwealth Constitution of 1901 held open the possibility that New Zealand might one day enter the federation.

After a century of engagement between the colonies, adjacent islands and those farther away, the Constitution provided the federal Parliament the power to determine Australia's relations with 'Pacific islands' (section 51 (xxx)). This was distinguished from external affairs powers more generally on the ground, as the first Prime Minister of Australia Edmund Barton explained in aspirational terms, that the Australian Commonwealth would play a particular role in 'regulating' the islands, as 'part of the British Empire.'[17] As it turned out, the federal Parliament rarely if ever invoked this head of power to regulate the Pacific islands. Nevertheless, law was a critical tool, and sometimes weapon, in the regulation of islanders within Australia and in Australia's offshore

[15] See Howitt, 'Ideological Origins of the Australian Antarctic, 1839-1933'.
[16] Nicholas Aroney, 'New Zealand, Australasia and Federation', *Canterbury Law Review* 16 (2010), 31 – 46.
[17] *Official Record of the Debates of the Australasian Federal Convention. Third Session. Melbourne, 20th January to 17th March 1898, 2 vols (*Melbourne: Robert S. Brain, Government Printer, 1898), 30.

territories. The Pacific Island Labourers Act of 1901 forcibly repatriated many islanders who had been brought to work in Australia, mainly in Queensland (over 60,000 worked there between 1863 and 1904).[18] The legislation was introduced in the first tranche of Commonwealth legislation that, along with the Immigration Restriction Act, formally inaugurated the White Australia policy. Like Indigenous peoples in Australia, Pacific Islanders who remained within Australia were excluded from citizenship status. Māori in Australia, however, could vote at the federal level and be naturalised as citizens, though they were excluded from old-age pension provisions. This notable exception for a racial minority was a concession to New Zealand in case that country decided to join the federation.[19]

Soon after federation, the protectorate of British New Guinea was placed under the authority of the Australian Commonwealth. The *Papua Act of 1905* incorporated the Territory of Papua within the Commonwealth, created the position of Lieutenant-Governor, and a six-member executive council, all appointed by the Governor-General. The act also provided for the creation of a legislative council, which included non-official members, usually drawn from the white resident population of the territory, as well as the aforementioned officers.[20] No provision was made for Indigenous representation.

[18] Tracey Banivanua Mar, *Violence and Colonial Dialogue: The Australian-Pacific Indentured Labor Trade* (Honolulu: University of Hawai'i Press, 2007).
[19] Paul Hamer, 'From Federation to the '501s': Māori Inclusion and Exclusion in Australia since 1901', unpublished Ph.D thesis, Monash University (2018), 21.
[20] *Papua Act 1905* (Cth).

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The early period of colonial administration in the Territory focused on controlling a labour pool for white-owned plantations and establishing the terms of land leases to white settlers. Land could only be purchased by the colonial administration, which also restricted Indigenous entrepreneurialism, and policed liquor licencing and inter-racial sexual relationships.[21] The administration was concerned neither with securing the consent of the (Indigenous) governed, nor with the development or progress of Indigenous peoples towards self-rule in colonial Papua. Yet law was central to the imposition and maintenance of colonial rule in Papua. Drawing largely on English common law, as well as specific Queensland statutes introduced after 1889, colonial law made no specific mention of the continuity or otherwise of 'native custom' in the *Papua Act*, although this was later recognised in the *New Guinea Laws Repeal and Adopting Ordinance of 1921*.[22] Instead, exceptional law was created for dealing with Indigenous peoples' disputes *inter se*. Native Regulations determined hygiene matters and curfews, and established a Court of Native Matters, which was preoccupied with punishing 'sorcery', inadequately defined and understood.[23] So, while the Court preserved certain aspects of 'custom' as 'cultural fact', judges subordinated Indigenous law to colonial objectives.[24] Traditional dispute settlement practices endured and even flourished during the period; yet the attempt to subordinate Indigenous law as customary law

[21] Edward P. Wolfers, *Race Relations and Colonial Rule in Papua New Guinea* (Sydney: Australia and New Zealand Book Co., 1975).
[22] J. R. Mattes, 'Sources of Law in Papua and New Guinea,' *The Australian Law Journal* 37 (September 1963), 148 – 153. *Papua Act 1905* (Cth), s. 21(5).
[23] Peter Fitzpatrick, *Law and State in Papua New Guinea* (London: Academic Press, 1980). Michael Goddard, 'The Snake Bone Case: Law, Custom, and Justice in a Papua New Guinea Village Court' *Oceania* 67(1) (1996), 50 – 63. On exceptional law more generally, see Shaunnagh Dorsett, *Juridical Encounters: Māori and the Colonial Courts, 1840–1852* (Auckland: Auckland University Press, 2017).
[24] Sinclair Dinnen, 'Sentencing, Custom and the Rule of Law in Papua New Guinea,' *The Journal of Legal Pluralism and Unofficial Law* 20 (1988), 19 – 54 at 26.

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would come to haunt the reformist agendas of the post-war period and the plans of the architects of decolonisation.

War, Australia's legal status and mandate rule in New Guinea and Nauru

The occupation of German New Guinea and Nauru was the first military action taken by the new Commonwealth in World War I in October 1914, at the behest of the Imperial government.[25] The legal nature of Australia's continued occupation of New Guinea and Nauru was to become an issue of diplomatic and scholarly contention over the following decades. The official history of Australian involvement in World War I focuses on the galvanising of a national identity through shared adversity, culminating in Australia's accession to sovereign independence with the passage of the statute of Westminster in 1931, incorporated into Australian legislation in 1942.[26] However, this account underplays how directly Australia's war experience was informed by the pursuit of old colonial ambitions for Pacific supremacy. Those ambitions came to focus on the German Pacific territories, which in 1914 comprised German New Guinea and Nauru; German Samoa (later Western Samoa); and the Marshall and Caroline Islands north of the equator.[27]

Contention over the nature of Australia's occupation of German New Guinea and Nauru was directly related to uncertainties about Australia's own legal status, both within the British empire and the international order. In the intra-imperial arena, the war had made plain that the growing

[25] C. E. W. Bean, 'Australia's Position at the Outbreak' in Bean (ed.), *Official History of Australia in the War 1914–1918* (Sydney: Angus & Robertson, 1941), 11th ed, vol 1, 1, 13.
[26] *Statute of Westminster 1931* (Imp); *Statute of Westminster Adoption Act 1942* (Cth).
[27] W. M. Roger Louis, *Great Britain and Germany's Lost Colonies 1914 – 1919* (Oxford: Clarendon Press, 1967).

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ambitions of the self-governing Dominions of Australia, New Zealand, South Africa and Canada to pursue regional interests in their own right were irreconcilable with the Imperial government's insistence on maintaining control over external affairs. Prior to the war, imperial control over external affairs meant that the Dominions were regarded as having 'no international standing whatever'.[28] Imperial Conferences established in the late nineteenth century had provided an outlet for ventilation of growing Dominion demands for greater autonomy. The Imperial government developed a compromise solution, devolving 'internal' heads of power to colonial governments whilst maintaining direct control over entry into treaties of defence.[29] That distribution of constitutional powers showed strain as war became more likely in the early decades of the twentieth century. Australia was particularly aggrieved at being bound by the 1886 Anglo-German Demarcation Agreement and, later, by the 1907 Anglo-Japanese Alliance, criticised in the media as a threat to the White Australia policy.[30]

For Australia, then, sovereign independence was a goal to be realised through the assumption of control over its own Pacific territories as much as through control over domestic affairs. Regional supremacy was held out as a measure of political 'maturity' as readily as was sovereignty itself. For Prime Minister W. M. Hughes, an Australian sub-empire in the Pacific was a corollary of the White Australia policy, and Australia's military occupation of German New Guinea and Nauru

[28] Lassa Oppenheim, *International Law: A Treatise* (London: Longmans, Green and Co, 1905) vol 1, 102 – 3.
[29] H. Duncan Hall, *The British Commonwealth of Nations: A Study of its Past and Future Developments* (London: Methuen & Co, 1920), 3.
[30] 'Congested Japan: The Danger to Australia — Why White Immigration is Imperative', *The Daily Telegraph* (Sydney), 5 July 1907, 7.

provided an opportunity to realise it.[31] The question of how to convert military occupation into permanent territorial acquisition was openly discussed in federal Parliament and in the media as a means of realising Australia's 'Pacific Ocean destiny'.[32] Key strategies included merging the military administration of occupied German New Guinea with the civil administration of the Territory of Papua, and securing Australian control over the lucrative Nauruan phosphate operation, established under German control by the British-owned Pacific Phosphate Company. Even pre-federation ambitions to annex the New Hebrides, which from 1906 had been administered as a dual condominium of France and Britain, were revived.[33] Australia's wartime aspirations in New Guinea and Nauru were mirrored in South Africa's occupation of German South West Africa, and New Zealand's occupation of German Samoa.

But the Dominions' expansionist ambitions during World War I were at odds not only with the Imperial government, but with the growing consensus at the international level against territorial aggrandisement in the war settlement.[34] In 1917, both US President Woodrow Wilson and British Prime Minister David Lloyd George declared their support for internationalised administration of the occupied territories as an alternative to post-war division amongst the Allied Powers of the 'spoils of war'. By 1918, the concept of 'internationalised administration' had coalesced around two basic principles: 'open door' trade, and 'self-government' of subject populations – meaning,

[31] W. M. Hughes, *The Splendid Adventure: A Review of Empire Relations Within and Without the Commonwealth of Britannic Nations* (London: Ernest Benn, 1929), 99 – 102.
[32] 'Melbourne, Wednesday, 12th August 1914', *The Age* (Melbourne), 12 August 1914, 8.
[33] Roger C. Thompson, 'The Labor Party and Australian Imperialism in the Pacific, 1901 – 1919' *Labour History* 23 (1972), 27 – 37 at 28.
[34] J. A. Hobson, *Towards International Government* (London: George Allen & Unwin, 1915). W. E. B. du Bois, 'Manifesto of the Second Pan African Congress', *The Crisis* 23(1) (1921), 5 – 10.

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in Lloyd George's framing, 'government by the consent of the governed'.[35] Both principles were vigorously contested by Australia, which continued to insist on exclusive 'ownership' of 'German properties, interests and territories captured in the Pacific Islands' as 'paying back the cost of the war'.[36] South African General Jan Smuts' proposal for a mandate system, whereby individual Powers would administer occupied German and Ottoman territories under the oversight of a new League of Nations, gathered momentum as the preferred compromise for post-war internationalisation.[37] Notably, Smuts maintained that German South West Africa and the German Pacific should be exempted from the mandate regime because they were 'inhabited by barbarians, who not only cannot possibly govern themselves, but to whom it would be impracticable to apply any ideas of political self-determination in the European sense'.[38]

In the months before the Paris Peace Conference, the irreconcilability of British with Australian plans for the occupied German Pacific territories fed Prime Minister Hughes' determination that Australia represent itself in peace settlement negotiations. In international law, Australia's self-representation at the Paris Conference marked its accession to sovereign independence, years before the 1926 Balfour Declaration, which is often identified in constitutional history as marking the 'independence' of Australia from Britain. At Versailles, Hughes doggedly pursued Australia's 'Pacific Ocean destiny', not only prosecuting the case for outright annexation of New Guinea and Nauru, but vigorously contesting Japan's proposal that the Covenant of the new League include a

[35] Prime Minister Lloyd George, speech delivered to Trades Union Congress, Caxton Hall, London, 5 January 1918.
[36] 'The Riches of Nauru', *Daily Post* (Hobart) 19 May 1917.
[37] J. C. Smuts, *A League of Nations: A Practical Suggestion* (London: Hodder and Stoughton, 1918).
[38] Smuts, *A League of Nations*, 15.

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statement of racial equality.[39] The Australian delegation also contested Japan's insistence that League Members be free to trade on equal terms in all internationalised territories. Conflict between Australia and Japan over regulation of post-war Pacific trade was more than academic. The Marshall and Caroline Islands, former German territories north of the equator, were earmarked for Japanese mandatory control, effectively creating a *de facto* border between territory controlled respectively by Australia and Japan. The diplomatic battle over the racial equality clause and open door trade in the former German Pacific, therefore, reflected deeper tensions over the construction of 'the Pacific' itself as a historical, geopolitical and anthropological space in the aftermath of world war.[40]

The compromise reached over post-war administration of the occupied territories was awkward.[41] The Covenant of the League of Nations provided for a tiered system of A, B, and C mandates to be overseen by a new Permanent Mandates Commission, comprised primarily of ex-colonial and imperial administrators.[42] The A Mandates comprised the former Ottoman territories in the Middle East, and the B Mandates, most of the former German territories in Africa. The C Mandates comprised South West Africa and the German Pacific territories, including German New Guinea, Nauru, Western Samoa, and the Marshall and Caroline Islands. This tripartite classification was justified on the basis of a linear teleology of civilizational development, but clearly reflected a

[39] Naoko Shimazu, *Japan, Race and Equality: The Racial Equality Proposal of 1919* (London and New York: Routledge, 1998).
[40] Alison Bashford, 'The Pacific Ocean' in David Armitage, Alison Bashford and Sujit Sivasundaram (eds.), *Oceanic Histories* (Cambridge: Cambridge University Press, 2018), 63 – 64.
[41] *Covenant of the League of Nations*, art 22.
[42] Susan Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (Oxford: Oxford University Press, 2015).

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pragmatic bargain struck between negotiating powers. According to the Covenant of the League, Mandatory Powers of C Mandates were obliged to carry out a 'sacred trust of civilisation' by furthering the 'well-being and development' of 'native populations'. This paternalist principle provided scant guarantee for advancement of local self-determination.[43] C Mandates were 'to be administered as part of the territory of the Mandatory Power' and exempted from open door trade requirements, which left Mandatory Powers with significant latitude to exercise executive control and economic monopolisation, with little basis for legal contest.[44]

The C Mandates of New Guinea and Nauru were conferred on the British empire and, in 1920, Australia was appointed as Administering Authority of both. However, the Imperial government and New Zealand resisted Australia's attempt to monopolise Nauruan phosphate. As the mandate system was negotiated in Paris, Britain, Australia and New Zealand secretly brokered the Nauru Island Agreement, instituting a tripartite monopoly over Nauruan phosphate, to be overseen by the new British Phosphate Commission (BPC).[45] The BPC acquired all of the Pacific Phosphate Company's assets, including its phosphate operation on Ocean Island, or Banaba, in the British protectorate of the Gilbert and Ellice Islands.[46] The BPC, which consisted of three commissioners appointed by the UK, Australian and NZ governments, was granted exclusive control over all

[43] Gerrit W. Gong, *The Standard of 'Civilization' in International Society* (Clarendon Press, 1984). Ntina Tzouvala, 'Civilization' in Jean d'Aspremont and Sahib Singh (eds.), *Concepts for International Law: Contributions to Disciplinary Thought* (Edward Elgar, 2018), 83 – 104.
[44] Evans, Luther Harris, 'Are "C" Mandates Veiled Annexations?' *Southwestern Political and Social Science Quarterly* 7 (1927), 381 – 400.
[45] *Nauru Island Agreement Act 1919* (Cth).
[46] Maslyn Williams and Barrie Macdonald, *The Phosphateers: A History of the British Phosphate Commissioners* (Melbourne: Melbourne University Press, 1985). Katerina Martina Teaiwa, *Consuming Ocean Island: Stories of People and Phosphate from Banaba* (Bloomington: Indiana University Press, 2014).

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matters pertaining to the Nauruan phosphate operation, leaving the Australian Administrator of Nauru to govern the local population.

The Commonwealth developed a professional bureaucracy of territorial administration in the interwar period. This growing field of public sector expertise drew on both the 'science of colonial administration' taught in British universities, and Australia's own experience with the Aborigines Protection Boards.[47] As Australia developed its mandatory administration of Nauru and New Guinea, which included annual reporting to the League of Nations, the bureaucracy of the Australian Territory of Papua was significantly expanded, with a view to the eventual merging of Papua with mandatory New Guinea.[48] Sir Hubert Murray, the longserving Lieutenant-Governor and Chief Judicial Officer of Papua, exercised sweeping executive powers within the Territory and advocated a paternalist, anthropology-led approach to the 'inevitable' extinction of native custom and culture.[49]

The question of native status was a central theme in the law of territorial administration. The Commonwealth adopted different approaches in the mandates awarded by the League of Nations and in territories already annexed to Australia. In New Guinea and Nauru, the existence of international mandatory obligations with respect to native well-being and development required

[47] J. D. Legge, *Australian Colonial Policy: A Survey of Native Administration and European Development in Papua* (Sydney: Angus and Robertson, 1956).
[48] Patricia O'Brien, 'Remaking Australia's Colonial Culture? White Australia and its Papuan Frontier 1901 – 1940' *Australian Historical Studies* 40 (2009), 96 – 112.
[49] Sir Hubert Murray, *Papua of Today, Or, An Australian Colony in the Making* (London: P.S. King & Son Ltd, 1925), 210 – 251.

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the formalisation of 'native' status, which had been unevenly defined under German protectorate law.[50] In stark contrast to the legal position within Australian sovereign territory, prior native land ownership was recognised in the Mandates of New Guinea and Nauru, as had been the practice under German rule. But beyond this basic foundation, Australian Administrators exercised almost total executive power to define the rights and freedoms of Indigenous peoples in New Guinea and Nauru, from health, education, immigration and labour regulation to land leasing and quarantining of royalties in trust. The Territory of Papua retained its own pre-war regime of native law. Although Papua was formally regarded as Australian territory and Papuans as British subjects, the Australian administration retained regulations that had been introduced by the former British protectorate to restrict Papuan movement, primarily as a labour control measure.[51]

As Australia, Japan and New Zealand joined the European empires in assuming control over external territories, a patchwork of colonial, imperial and international jurisdictions produced a volatile cartography of imperial tensions across the region. The Dutch colony of Irian Jaya bordered the Australian Territory of Papua and the New Guinea Mandate. The Nauru Mandate bordered Britain's continued administration of the Gilbert and Ellice Islands (now Kiribati) as a colonial protectorate.[52] To the north of the equator, Japan's assumption of the Pacific Islands Mandate produced a border between Japan and Hawai'i, the latter annexed by the United States in

[50] Stewart Firth, 'Colonial Administration and the Invention of the Native' in Donald Denoon with Stewart Firth, Jocelyn Linnekin and Karen Nero (eds.), *Cambridge History of the Pacific Islanders* (Cambridge: Cambridge University Press, 2008), 254 – 288.
[51] *Pacific Island Labourers Act 1906* (Cth). Peter M. McDermott, 'Australian Citizenship and the Independence of Papua New Guinea' *University of New South Wales Law Journal* 32(1) (2009), 50 – 74.
[52] Doug Munro and Stewart Firth, 'Towards Colonial Protectorates: The Case of the Gilbert and Ellice Islands' *Australian Journal of Politics and History* 32 (1986), 63 – 71.

1898. Imperial Japan's discontent with Australia's rejection of racial equality and open door trade requirements in the C Mandates continued to escalate. Within Australia, older Monroeist sentiment took on an anti-Japanese inflection, which escalated after Japan's withdrawal from the League in 1933.[53]

The Australian Mandates of New Guinea and Nauru and the Japanese Pacific Islands Mandate proved critical to the geography of conflict in the Pacific during World War II; and as Bashford notes, it 'was the Pacific War that globalised the second "world" war'.[54] Japan attacked Rabaul in New Guinea in 1941 and Nauru in 1942, following a German raid on Nauru in 1941. Australian civil administrators withdrew from both mandated territories in 1942.[55] Because of its central Pacific location, Nauru became an important strategic point in Japan's regional offensive. By 1944, Japanese soldiers outnumbered Nauruans on the island, and over half the Nauruan population was interned on Chuuk Atoll in the Marshall Islands, under extreme conditions of starvation and deprivation, many never to return.[56] Between 1942 and 1944, New Guinea became a front in the Pacific war, disrupting an already uneven landscape of colonial administration. Japan established its military base on Manus Island, in the Admiralty Islands in northern New Guinea. The Australia New Guinea Administrative Unit (ANGAU) was established in Port Moresby to co-ordinate Australian activity in Papua and New Guinea, including native policing and labour recruiting,

[53] Merze Tate, 'Australasian Monroe Doctrine' *Political Science Quarterly* 76 (1961), 264 – 84.
[54] Bashford, 'The Pacific Ocean', 82.
[55] Stewart Firth, 'The War in the Pacific' in Denoon et al (eds.), *Cambridge History of the Pacific Islanders*, 294 – 295.
[56] Yuki Tanaka, 'Japanese Atrocities on Nauru during the Pacific War: The Murder of Australians, The Massacre of Lepers and the Ethnocide of Nauruans' *The Asia-Pacific Journal* 4 (2010), 1 – 19.

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effectively erasing the distinction between New Guinea as an international mandate and Papua as an annexed territory.[57] Across both regions, ANGAU co-ordinated indentured Indigenous labour to serve the ANZAC forces. According to anthropologist W.E.H. Stanner, the 'natives… rendered the Allied cause most excellent war service' despite 'severe' 'turnover of labour' and 'sickness and disease'.[58]

From post-war trusteeship to political independence and neo-imperialism

World War II precipitated decolonisation in much of Asia and Africa, beginning with the Proclamation of Indonesian Independence in 1945. The global decolonisation movements placed new pressures on Australia's Pacific empire, conflicting directly with Australia's post-war foreign policy of 'exert[ing] dominant political influence in the area with a view to maintaining Australian security behind a peripheral screen of islands'.[59] Australia retained administrative control of Nauru and New Guinea under the new United Nations trusteeship system, but the UN Charter identified 'self-government or independence' as a goal of trusteeship, conflicting directly with Australia's paternalist attitudes toward Indigenous peoples.[60] It also expanded on the legal obligations owed by 'trustees' with respect to political and economic preparation of local populations for independence, and increased the capacity of New Guinean and Nauruan peoples to make direct

[57] W. E. H. Stanner, 'New Guinea under War Conditions' (1944) 20 *International Affairs* 4, 481 – 494.
[58] Stanner, 'New Guinea under War Conditions', 488.
[59] David Goldsworthy, 'British Territories and Australian Mini-Imperialism in the 1950s' *Australian Journal of Politics and History* 41 (1995), 356 – 372.
[60] Norman Harper and David Sissons, *Australia and the United Nations* (New York: Manhattan Publishing Co., 1959), 180 – 215.

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representations to the UN Trusteeship Council, which included a growing cohort of decolonising and anti-imperial states.

The Commonwealth had anticipated the weakening of its executive powers in New Guinea and Nauru during the war by creating the new Department of External Territories in 1941. The new Department amalgamated Australia's administration of Papua and Norfolk Island with that of New Guinea and Nauru. H.V. Evatt, then Minister for External Affairs and an active participant in negotiations over the structure of the new UN, was instrumental in reframing Australia's regional ambitions as consonant with international post-war norms.[61] He promoted a major role for Australia in Pacific reconstruction, and his ideas informed the Australia–New Zealand Agreement (or 'Canberra Pact') of 1944.[62] Against the emergence of US dominance, the Canberra Pact 'demanded an ANZAC voice in peace in the Pacific' and declared a defensive zone from the Cocos to the Cook Islands.[63] Australian Administrators forestalled the question of decolonisation of Australia's external territories by shifting from outright denial of independence, as had been routine during the mandate period, toward asserting the slow pace of native 'development'. The UN Trusteeship Council itself accepted Australia's arguments that independence was 'unsuitable' for the people of Papua New Guinea and Nauru well into the early 1960s, citing an 'absence' of

[61] Jon Piccini, *Human Rights in Twentieth-Century Australia* (Cambridge University Press, 2019).
[62] Australia – New Zealand Agreement, Canberra, 21 January 1944.
[63] W. David McIntyre, 'Australia, New Zealand, and the Pacific Islands' in Judith Brown (ed.), *The Oxford History of the British Empire, Volume IV: the Twentieth Century* (Oxford University Press, 1999), 667 – 692.

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Indigenous political organisation, and 'low' levels of 'political advancement' toward the European model of sovereign statehood.[64]

On this basis, Australia consolidated its law and practice of territorial administration as a key dimension of Australian post-war statecraft and public sector expertise.[65] The Australian School of Pacific Administration (ASOPA) was formed in 1945, with a curriculum designed in conjunction with the Anthropology Department at the University of Sydney.[66] John Kerr, a prominent barrister and judge who later served as Governor-General, was appointed as the school's first Principal, training public servants for service not only in Papua, New Guinea and Nauru, but also in the Northern Territory. The *Papua and New Guinea Act 1949* provided for joint administration of the two territories, but significant legal distinctions remained. Australia's trusteeship obligations – including the obligation to promote political independence – applied only to New Guinea; and under the *Australian Nationality and Citizenship Act 1948*, Papuans were considered Australian citizens, while New Guineans – and Nauruans – were not.[67] As Charles Rowley, principal of ASOPA from 1950-1964, observed: by the mid-1960s a 'sixth of the people who owe allegiance to the Commonwealth of Australia are native-born inhabitants of the Territory of Papua and New Guinea'.[68] But Papuans' Australian citizenship remained heavily qualified: they

[64] United Nations Visiting Mission to Trust Territories in the Pacific, *Report on New Guinea*, Trusteeship Council Official Records: Twelfth Session, 1953, Supplement 4, 4 – 5. United Nations Visiting Mission to Trust Territories in the Pacific, *Report on Nauru*, UN Trusteeship Council Official Records, 12th session, UN Doc T/1054 (26 May 1953), 2.
[65] Harper and Sissons, *Australia and the United Nations*, 180 – 215.
[66] H. I. Hogbin and C. Wedgwood, 'Local Groupings in Melanesia', *Oceania*, XXIII (1953). I. C. Campbell, 'The ASOPA Controversy: A Pivot of Australian Policy for Papua and New Guinea, 1945–49' *Journal of Pacific History* 35 (2000), 83 – 100.
[67] McDermott, 'Australian Citizenship'.
[68] C. D. Rowley, *The New Guinean Villager: A Retrospect from 1964* (Cheshire Publishing, 1972), 11.

had to seek special permission to visit the continent and could stay for a maximum of three months.[69]

In 1951, the Department of External Territories was amalgamated with the Department of the Interior, forming the new Department of Territories under Director Paul Hasluck. Hasluck's 'positive Australianism' served the commitments of the 1944 Canberra Pact, whilst claiming to meet legal responsibilities of trusteeship.[70] As Australia repositioned itself as the agent of modernisation in the Pacific, strong ideological convergences emerged over the 1950s between the Commonwealth's assimilationist policies regarding Aboriginal and Torres Strait Islander peoples and its developmentalist policies regarding 'native populations' in New Guinea and Nauru.[71] The professionalisation of territorial administration occurred in close relationship with the promotion of Australian commercial investment in the territories, largely in natural resource exploitation and primary industry. Hasluck emphasised agrarian development as a first step in political development, protecting the rights of small landholders and supporting the growth of a coffee industry in the Papua New Guinean Highlands, while opposing the expansion of European-run largescale plantations. Development projects in villages were undertaken, he claimed, always with the 'friendly co-operation of the local people'.[72]

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[69] Donald Denoon, *A Trial Separation: Australia and the Decolonisation of Papua New Guinea* (ANU E Press, 2012), 9.
[70] Scott MacWilliam, 'Anti-Conservatism: Paul Hasluck and Liberal Development in Papua New Guinea' *Australian Journal of Politics and History* 65(1) (2019), 83 – 99.
[71] Jane Landman, 'Visualising the Subject of Development: 1950s Government Film-making in the Territories of Papua and New Guinea' *Journal of Pacific History* 45 (2010), 71 – 88.
[72] Paul Hasluck, *A Time for Building: Australian Administration in Papua and New Guinea 1951–1963* (Melbourne: Melbourne University Press, 1976), 79.

Yet there was a concealed violence in this liberal developmentalist vision. The '*taim kiap*', or extension of liberal imperial rule in the 1950s and 1960s through the appointment of patrol officers in the Western Province, entailed the supplanting of local legal orders and suppression of Indigenous violence, such as regional warfare and cannibalism, by colonial state law. At times entire villages were punished for continuing their own practices. As one Faiwolmin man from the Western Province recalled, when 'the Europeans came . . . they were really rough. We were frightened of them. They came with a gun and they shot a pig and . . . they destroyed our garden'.[73] But perhaps most effective was the placement of some children in district boarding schools where they were taught English, enabling these students to access roles in the administration while severing their ties to their mothers and the transmission of cultural knowledge in their own communities.

The post-war shift toward developmentalist justifications for prolonged Australian control of its trust territories was met with growing Indigenous resistance. In parts of Papua New Guinea, the war had impressed on local people a new sense of the world and of their place in it, fostering expectations of racial and civic equality. As Peter Simongun of Wewak in the East Sepik pointed out, 'Yes, we have helped you in this war, now we are like cousins, like brothers. We too have won the war. Now whatever knowledge, whatever ideas you have, you can give them to us. Before all the things we did, you gaoled us, and you fined us all the time. But now. What now?'[74] On Manus Island, reclaimed by Australia after Japanese abandonment of the military base, activist

[73] Quoted in Nicole Polier, ''When Australia was the Big Name for Papua New Guinea': The Colonial Constitution of Fiaiwolmin Subjects' *Journal of Historical Sociology* 8 (1995), 257 – 277.
[74] Simongun quoted in John Dademo Waiko, *A Short History of Papua New Guinea* (Melbourne: Oxford University Press, 1993), 124.

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Paliau Maloat sought political self-determination through resistance to colonial government and reforming village life by removing social divisions and insisting that all money should be pooled and land held in common.[75] In the early 1960s, Paliau visited the United States under the sponsorship of the United Nations, and was elected to the first House of Assembly in 1964, representing Manus. A co-founder of the Papua and New Guinea Union ('Pangu') Parti, he continued to hold political power into the 1970s.

The Department of Territories responded to the Paliau movement by implementing 'native' government structures, designed by Australian administration and overwhelmingly advisory in nature. The Department of Territories introduced local councils in Papua and New Guinea, and in Nauru.[76] The *Papua and New Guinea Act 1949* created a single Legislative Council for both territories, with 'three elected European members and three executive-nominated native members'.[77] It also created 'Advisory Councils for Native Matters', appointed directly by the Australian Administrator and with no legislative or executive powers.[78] In Nauru, the ad hoc 'Council of Chiefs', initially created under German rule in the late nineteenth century, was renamed the Nauru Local Government Council in 1951, but granted no executive power.[79]

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[75] Ton Otto, 'The Paliau Movement in Manus and the Objectification of Tradition' *History and Anthropology* 5 (1992), 427 – 454.
[76] Hasluck, *A Time for Building*, chapter 15.
[77] *Papua and New Guinea Act 1949* (Cth), ss 35 – 53. Ian Grosart, 'Native Members in the Legislative Council of the Territory of Papua and New Guinea 1951 – 1963', *Journal of Pacific History* 1 (1966), 147 – 164.
[78] *Papua and New Guinea Act 1949* (Cth), ss 25 – 29.
[79] *Nauru Local Government Council Ordinance No. 2 of 1951*.

Over the 1950s and 1960s, as self-determination evolved from a rhetorical ideal of international relations toward a legally definable right in international law, Australia's strategy of deferring independence became increasingly untenable.[80] Encouraged by the global decolonisation movements, New Guinean and Nauruan advocates made increasing use of native council structures as sites of local organisation and as avenues onto the international platform provided by the UN Trusteeship Council. In the 1950s, under the leadership of Head Chief Hammer DeRoburt, the Nauru Local Government Council (NLGC) contested Australia's justifications for continued legal and political authority in Nauru, including the British Phosphate Commission's monopolisation of Nauruan phosphate and the calculation of phosphate royalties on a paternalist 'needs-based' calculation.[81] Following the UN General Assembly's 1960 Declaration on the Granting of Independence to Colonial Peoples, the Trusteeship Council changed its position on Nauru and Papua New Guinea, and Soviet and African delegates on the Council pressured Australia to hasten plans for independence.[82] As Australia's long-desired dream of a formal empire in the South Pacific dissolved in the political upheavals of the 1960s, the Department of Territories changed its rhetorical strategy again, away from using development as a means of deferring independence and toward entrenching 'informal' modes of economic and cultural dominance that could be retained as formal administrative control was ceded.[83]

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[80] U. O. Umozurike, *Self-Determination in International Law* (Hamden, Connecticut: Archon Books, 1972).
[81] Letter from the Nauru Local Government Council to the British Phosphate Commissioners dated 30 May 1957, reproduced in Barrie Macdonald, *In Pursuit of the Sacred Trust: Trusteeship and Independence in Nauru* (New Zealand: New Zealand Institute of International Affairs, 1988), 40.
[82] *Declaration on the Granting of Independence to Colonial Countries and Peoples*, UN Doc A/RES/1514(XV) (14 December 1960).
[83] Goldsworthy, 'British Territories and Australian Mini-Imperialism'.

Nauru's transition to political independence was negotiated between 1965 and 1968 in the 'Nauru Talks' between the Department of Territories and the NLGC. By 1965, the BPC had strip-mined one third of Nauru's land mass, feeding cost-price superphosphate into the agricultural sectors of Australia, New Zealand and the UK. The Nauru Talks focused on two main issues in the transition to independence: ownership of the phosphate operation, which the BPC sought to retain; and liability for rehabilitation of mined-out land, which Australia sought to resist.[84] The Department of Territories, led by Charles Barnes, attempted to solve both problems by proposing that the entire Nauruan population be resettled on an island within Queensland's territorial waters under an attenuated form of 'self-government' as a municipal council, leaving the island itself to the BPC.[85] The Nauruan delegation, led by Hammer DeRoburt, rejected Australia's resettlement proposal.

The parties eventually agreed that the Nauruan people would form a Republic on Nauru, but would be required to buy out the BPC's assets, and guarantee continued phosphate supply to the tripartite governments.[86] The UN Trusteeship Council approved the proposed independence agreement in 1967. Australia argued that the agreement included an implied indemnity against any Nauruan claims for compensation for environmental and economic exploitation during the mandate and trusteeship periods.[87] Hammer DeRoburt rejected that claim, but insisted that the liability issue should not delay independence.[88] The Republic of Nauru gained independence in January 1968.[89]

[84] Nancy Viviani, *Nauru: Phosphate and Political Progress* (Canberra: Australian National University Press, 1970).
[85] Viviani, *Phosphate and Political Progress*, 143 – 147.
[86] *Nauru Independence Act 1967* (Cth).
[87] United Nations Trusteeship Council, Official Records, 13th special session, 1323rd meeting (22 November 1967), 4.
[88] Nancy Viviani, 'Nauru Phosphate Negotiations' *Journal of Pacific History* 3 (1968), 151 – 154.
[89] J. W. Davidson, 'The Republic of Nauru' *Journal of Pacific History* 3 (1968), 145 – 150.

The Constitution of the new Republic was drafted by Professor James Wight Davidson, a New Zealand-born, Cambridge-trained colonial historian appointed as inaugural Professor of Pacific History at the Australian National University in 1950.[90]

By contrast, the independence of Papua-New Guinea remained uncertain into the late 1960s. Over the 1950s and 1960s, numerous proposals for continued Australian control circulated, including a proposition from a Papua-New Guinean delegation that the eastern half of the island become the 'seventh state' of the Commonwealth. This was unthinkable to those in the Australian government who held firm to the ideology of a White Australia.[91] In 1958, Sir John Kerr had even proposed that if direct annexation of Papua and New Guinea was not possible, Australia should campaign for a new Dominion of its own – the 'Federation of Melanesia', incorporating Papua, New Guinea, Dutch New Guinea.[92] That proposal was not supported by Hasluck, as it implied acceptance of an enforceable right of self-determination in international law, a position Australia had actively sought to resist.[93] It also risked alienating Indonesia, which regarded itself both as an exemplar of anti-imperialism and the rightful successor to Dutch rule, including in West Papua. Throughout the 1960s and 1970s, the protection of Australian mining and agricultural interests in Papua-New Guinea remained paramount in the approaches of the Department of Territories and the

[90] J. W. Davidson, 'The Decolonisation of Oceania' *Journal of Pacific History* 6 (1971), 133 – 150 at 134. J. W. Davidson, 'Understanding Pacific History: The Participant as Historian', in Peter Munz (ed.), *The Feel of Truth: Essays in New Zealand and Pacific History* (Wellington 1969), 25 – 40.
[91] Denoon, *A Trial Separation*, 4.
[92] Hank Nelson, 'Liberation: the End of Australian Rule in Papua New Guinea' *Journal of Pacific History* 35 (2000), 269 – 280 at 271.
[93] Victor Kattan, 'There Was an Elephant in the Court Room': Reflections on the Role of Judge Sir Percy Spender (1897 – 1985) in the South West Africa Cases (1960 – 1966) After Half a Century,' *Leiden Journal of International Law* 31 (2018), 147 – 170.

Department of External Affairs. This meant ignoring the desires of a growing independence movement in Bougainville, the site of the Panguna copper mine, leading to a bitter decade-long civil war after Papua New Guinea achieved independence in 1975 and took control of the island.[94] As with Nauru, pressure from the UN Trusteeship Council accelerated the trajectory of New Guinean independence, as did the staunch anti-imperial views of then Labor leader, Gough Whitlam, who proclaimed that 'Australia was never truly free until Papua New Guinea became free'.[95] Whitlam's visit to Papua-New Guinea in 1969 helped reverse the Hasluckian policy of prioritising 'leisurely' economic development over political independence. Following Nauruan independence, the Department of Territories focused on preparing a roadmap for speeding up independence in Papua-New Guinea.

When Whitlam's Labor Party formed government in 1972, it upended the policy landscape of the Department of Territories, seeking Aboriginal land rights in the Northern Territory and decolonisation for Papua-New Guinea. Michael Somare, then leader of the Pangu Parti, insisted that Papua-New Guinean priorities lead the process, and emphasised the need to consult communities first. Somare and his team, suspicious that 'Australia would make all its constitutional decisions for it and continue to set the pace', wanted a 'home grown' Papua New Guinean Constitution, as opposed to an Australian-drafted version.[96] A Constitutional Planning

[94] Donald Denoon, *Getting under the Skin: the Bougainville Copper Agreement and the Creation of the Panguna Mine* (Melbourne: Melbourne University Press, 2000).
[95] Denoon, *A Trial Separation*, 1.
[96] Michael Somare quoted in Jonathan Ritchie, 'From the Grassroots: Bernard Narokobi and the Making of Papua New Guinea's Constitution', *The Journal of Pacific History* 55 (2020), 235 – 254 at 237. See also Bernard Narokobi, *The Melanesian Way* (Boroko, Papua New Guinea: Institute of Papua New Guinea Studies; Suva, Fiji: Institute of Pacific Studies, University of the South Pacific, 1983).

Committee was appointed to lead the consultation process across the country and, in 1975, a Law Reform Commission (LRC) was also created.[97] Of central concern to many New Guineans was the question of dual citizenship, which the Constitution ultimately disallowed, in large part because of the second-class Australian citizenship previously awarded to colonial subjects. The LRC, headed by Bernard Narokobi, a recent graduate of the University of Sydney's law faculty, was tasked with not only consolidating but also decolonising the Papua New Guinean legal code, which included overturning colonial codes and their assumptions regarding sorcery and sexuality, particularly adultery.[98] However, as critics pointed out at the time, no women were appointed to decision-making roles in either organisation, an exclusion still criticised today.[99]

Conclusion: the legacies and continuities of Australia as empire

The history of Australian empire in the Pacific has produced complex relations of political, economic and cultural domination and resistance that defy contemporary distinctions of territory and citizenship. Statist accounts of Australian legal history have been significantly enriched by scholarship tracing the shifting dynamics of legal and political power within the British empire, the shifting articulations of Australia's attempts at regional self-assertion, and most importantly, the histories of Indigenous and Islander engagement and resistance to European presumptions to rule.[100] This scholarship suggests that, far from being alternative modes of hierarchical global

[97] Denoon, *A Trial Separation*, 112 – 113.
[98] Alex Golub, 'Legislating the Melanesian Way: Bernard Narokobi and the Law Reform Commission of Papua New Guinea', *The Journal of Pacific History* 55 (2020), 255 – 273.
[99] Golub, 'Legislating the Melanesian Way', 266 – 267.
[100] Tracey Banivanua Mar, *Decolonisation and the Pacific: Indigenous Globalisation and the Ends of Empire* (Cambridge University Press, 2016). Miranda Johnson, *The Land Is Our History: Indigeneity, Law and the Settler State* (New York: Oxford University Press, 2016).

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ordering, the imperial, the international and the national are intersecting projects that require ongoing renewal against the existence of other modes of community, and other modes of history.

Through constructions of territory and citizenship, and through the authorisation and regulation of movement across those foundational jurisdictional thresholds, law has been an indispensable tool of Australian empire, and continues to be so. The legacies of Australia's imperial aspirations remain clear, even as the vocabulary and techniques of empire continue to shift. The old imperial presumptions – to a regional 'screen of islands', to racial and cultural superiority, and to resource dominance – continue to find new expression. Contemporary examples include Australia's use of Nauru, Manus Island, and Christmas Island as sites for the offshore detention of asylum seekers; and its aggressive pursuit of oil and gas resources in the Timor Sea.[101] At the same time, Australia's tradition of territorial administration continues through the Commonwealth's involvement in governance and development throughout the Pacific, in public service secondments, technical assistance, and aid programs, in Papua New Guinea and Nauru, and as well as in Timor Leste, the Solomon Islands, and Vanuatu.

The old imaginary of 'adjacent islands' also continues to shift and evolve, as does the formal cartography of administered territories, internal and external to Australian sovereign jurisdiction. Australian-administered islands now include Norfolk Island, Ashmore and Cartier Islands,

[101] Anthea Vogl, 'Over the Borderline: A Critical Inquiry into the Geography of Territorial Excision and the Securitisation of the Australian Border' (2015) 38 *UNSW Law Journal*, 114 – 145. Katerina Teaiwa, 'Ruining Pacific Islands: Australia's Phosphate Imperialism' *Australian Historical Studies* 46 (2015), 374 – 91. *Arbitration under the Timor Sea Treaty (Timor-Leste v. Australia)* (Permanent Court of Arbitration, Case 2015–42); *Timor-Leste v. Australia (Questions Relating to the Seizure and Detention of Certain Documents and Data)*, International Court of Justice, Summary of Judgments and Orders (2014). Cait Storr, *International Status in the Shadow of Empire: Nauru and the Histories of International Law* (Cambridge University Press, 2020).

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Christmas Island and the Cocos (Keeling) Islands, the Coral Sea Islands (off the Great Barrier Reef), and Heard and Macdonald Islands. Territories include the Australian Antarctic Territory, as well as the Australian Capital Territory and Northern Territory, both now classed as 'self-governing' with the Commonwealth providing strategic governance advice. Legacies of imperial rule continue to define these spaces, and the political imaginations that construct and resist them. Considering Australia's legal history as both product and agent of empire complicates the nationalising impulse, and entangles the country in its region – where, of course, it has always been.

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