How can fragmented and divided societies that are not immediately compatible with centralized statehood best adjust to state structures? This book argues that the answer to this question rests in part on the role that constitution making can play in state building. This book is an exercise in both comparative constitutional law and comparative politics, as it proposes the idea of a constituent process, whereby public participation in constitution making plays a positive role in state building. Public participation can help to foster a sense of political community and to produce a constitution that enhances the legitimacy and effectiveness of state institutions, because a liberal-local hybrid can emerge to balance international liberal practices with local customary ones. This book represents a sustained attempt to examine the role that public participation has played during state building and the consequences it has had for the performance of the state. It is also the first attempt to conduct a detailed empirical study of the role played by the liberal-local hybrid approach in state building.

Joanne Wallis is a lecturer in the School of International, Political and Strategic Studies at the Australian National University. She has previously taught at the University of Cambridge, the University of Melbourne, and Swinburne University. She completed her PhD in politics and international studies at the University of Cambridge in 2011. From January 2009 to January 2012, she was an honorary fellow of the School of Social and Political Sciences at the University of Melbourne. In 2006, she was a Fulbright Scholar at the Walker Institute of International and Area Studies at the University of South Carolina. She has also worked as a lawyer and has conducted research consultancies for Australian and international NGOs. Her research considers the role that constitution making plays in building states and nations in postconflict societies, with a particular emphasis on the opportunities for engagement between liberal and local approaches to law, governance, and development.
Constitution Making during State Building

J O A N N E W A L L I S
Australian National University
For my parents,
LORRAINE AND GREGORY WALLIS
Contents

List of maps ix
List of tables x
Acknowledgments xi
List of acronyms xv
Introduction 1

Part I Normative Justification for a Constituent Process 15
1 The normative justification 17
2 A constituent process 40

Part II Minimal Participation in Timor-Leste 73
3 State building and constitution making in Timor-Leste 75
4 Constituent power in Timor-Leste 109
5 Constituted power in Timor-Leste 148

Part III Extensive Participation in Bougainville 193
6 State building and constitution making in Bougainville 195
7 Constituent power in Bougainville 229
8 Constituted power in Bougainville 261
PART IV COMPARING THE TWO CASES AND CONCLUSIONS 301

Comparing the constitution-making processes 303

The role of a constituent process in state building 315

Conclusion 345
Bibliography 351
Index 395
Maps

1 Melanesia  page xiii
2 Timor-Leste  xiii
3 Bougainville  xiv
## Tables

1. Timor-Leste development indicators \( \text{page 170} \)
2. Bougainville development indicators \( \text{page 281} \)
Acknowledgments

This book has grown from my PhD research, and I gratefully acknowledge my PhD supervisor at the University of Cambridge, James Mayall. In one of our last supervisions, James observed that I had undergone an “intellectual transformation” during my time in Cambridge. To the extent that I did, it was in large part due to the confidence and inspiration that I gained from his supervision and friendship. I was fortunate to have my PhD examined by leading scholars in the fields of liberal-local hybridity, Oliver Richmond, and constitution making, Barbara Metzger. The advice and encouragement that they gave me greatly contributed to the development of my PhD research into this book.

During my PhD, I received generous financial support from the Cambridge Commonwealth Trust via a Poynton Cambridge Australia Scholarship and travel and fieldwork funding. I also received financial support from Wolfson College via a Wolfson College Commonwealth Studentship and travel funding. My studies were facilitated by the Overseas Research Studentship I received from the University of Cambridge, and my fieldwork was supported by grants from the Mary Euphrasia Morely, Sir Bartle Frere, and Worts Travel Funds and the Smuts Memorial Fund.

Many people gave their time to assist me during my fieldwork. I am grateful to the Timorese and Bougainvilleans who so graciously and patiently helped me to understand their experiences and aspirations, particularly my Timorese research assistant, Detaviana Madalena Guterres Freitas, who worked with me in 2013. I hope that the admiration that I have for the courage, generosity, and resilience of ordinary Timorese and Bougainvilleans is evident throughout this book.

After finishing my PhD, I was fortunate to take up a position as a lecturer in the Strategic and Defence Studies Centre in the School of International, Political and Strategic Studies at the Australian National University in Canberra.
xii

Acknowledgments

I gratefully acknowledge the support and encouragement of the head of the center, Brendan Taylor; the school research director, Joan Beaumont; and the school education director, Ian Hall. I also thank my colleagues in the center, particularly for their comments during our Work In Progress seminar, including John Blaxland, Richard Brabin-Smith, Emma Campbell, Andrew Carr, Paul Dibb, Russell Glenn, Daniel Marston, Charles Miller, and Garth Pratten. I also thank my colleagues in the Asian Security Reading Group for their feedback, particularly David Envall, Luke Glanville, Evelyn Goh, Andy Kennedy, Amy King, and Yongwook Ryu. I gratefully acknowledge the financial support provided by the center and by the Research School of Asia and the Pacific at the university for my additional fieldwork.

On moving to Canberra, I was also fortunate to meet my partner, Ross, whom I thank for his love, understanding, and support while I finalized this book. Most importantly, I thank my parents, Lorraine and Greg, and my brother, Mark. Everything I am and have done is due to their love, encouragement, and support.
MAP 3 – Bougainville
Acronyms

ABG – Autonomous Bougainville Government
AMP – Aliança da Maioria Parlamentar (Alliance of the Parliamentary Majority)
APODETI – Associação Popular Democratca Timorense (Timorese Popular Democratic Association)
ASDT – Associação Social Democrata Timorense (Timorese Social Democratic Association)
BCC – Bougainville Constitutional Commission
BCL – Bougainville Copper Limited
BFF – Bougainville Freedom Fighters
BGK – Bloku Governu Koligasau (Government Coalition Block)
BIG – Bougainville Interim Government
BIPG – Bougainville Interim Provincial Government
BPC – Bougainville People’s Congress
BPS – Bougainville Police Service
BRA – Bougainville Revolutionary Army
BRF – Bougainville Resistance Forces
BTG – Bougainville Transitional Government
CAPS – Community Auxiliary Police Service
CAVR – Comissão de Acolhimento, Verdade e Reconciliação (Commission for Reception, Truth and Reconciliation)
CNRT – Congresso Nacional de Reconstrução de Timor-Leste (National Congress for the Reconstruction of Timor-Leste)
(CThe) – Conselho Nacional da Resistencia Timorese (The National Council of Timorese Resistance)
CPD- – Council for the Popular Defence of the Democratic Republic of Timor-Leste
CTF – Truth and Friendship Commission (Indonesia–Timor-Leste)
List of acronyms

ETPA – East Timor Public Administration
ETTA – East Timor Transitional Administration
FALINTIL – Forças Armadas de Libertação Nacional de Timor-Leste (Armed Forces for the National Liberation of East Timor)
F-FDTL – FALINTIL-Forças de Defesa de Timor Leste (FALINTIL-Defence Force of Timor-Leste)
FRELIMO – Frente de Libertação de Moçambique (Liberation Front of Mozambique)
FRETILIN – Frente Revolucionaria de Timor Leste Independente (Revolutionary Front for an Independent Timor)
GDP – gross domestic product
IDPs – internally displaced persons
InterFET – International Force for East Timor
JSB – Joint Supervisory Body
KOTA – Klibur Oan Timor Aswain (Association of Timorese Warrior Sons)
LPV – limited preferential voting
MDF – Me’ekamui Defence Force
MGU – Me’ekamui Government of Unity
MHRs – members of the House of Representatives (Bougainville)
MP – member of Parliament
NSPG – North Solomons Provincial Government
OMG – Original Me’ekamui Government
PD – Partido Democrata (Democratic Party)
PDL – Programa Desenvolvimento Local (Decentralized Development Program)
PMG – Peace Monitoring Group
PNGDF – Papua New Guinea Defence Force
PNTL – Policia Nacional de Timor-Leste (National Police of Timor-Leste)
POLRI – Polisi Republik Indonesia (Indonesian National Police)
PPT – Partido do Povo de Timor (People’s Party of Timor)
PSD – Partido Socialista Democrata (Social Democrat Party)
PST – Partido Socialista de Timor (Socialist Party of Timor)
RPNGC – Royal Papua New Guinea Constabulary
TMG – Truce Monitoring Group
UDT – União Democratica Timorense (Timorese Democratic Union)
UN – United Nations
UNDP – United Nations Development Programme
List of acronyms

UNMISET – United Nations Mission of Support in East Timor
UNMIT – United Nations Integrated Mission in Timor-Leste
UNOMB – United Nations Observer Mission in Bougainville
UNTAET – United Nations Transitional Administration in East Timor
UNTAS – Uni Timor Aswain (Union on Timorese Heroes)
WILMO – Wisai Liberation Movement