

**GOVERNMENT AND POLITICS
OF
MALAYSIA**

Government and Politics Of Malaysia

By

DR. P. SHARAN

M.A. Ph.D.



METROPOLITAN

Published by :

B.V. Gupta, Managing Director,
Metropolitan Book Co. (Pvt.) Ltd.
1, Netaji Subhash Marg, New Delhi-110002, India.

© AUTHOR

First Edition 1984

M
320-9595
SHA

409404

Printed by Pragati Press through VRN Composing Agency, Shahdara.

29 MAY 1986
Pustaka Negara
Malaysia

PREFACE

Malaya attained independence 10 years after India, and it became Malaysia in September 1963, by including the colonies of Sabah and Sarawak (in North Borneo). But Singapore separated from the federation of Malaysia in August 1965. Some notable features of Malaysia, particularly for Indian students are : First, its population, like that of India is composite and heterogeneous. Thus its society is plural and its politics is largely characterised by ethnic conflicts. Second, like India the component units of Malaysian federation had also been ruled by the British before independence. Third, the constitution of Malaysia, again, like that of India, is both parliamentary and federal. The basic features are the same in both cases, yet there are several differences between the constitutional provisions and practices of the two countries. One unique feature of Malaysia is that it is the only Muslim majority state in the world, which has successfully worked the democratic system since it became independent. For all these reasons, study of the Government and Politics of Malaysia will be found useful and interesting by students of Political Science as well as by general readers.

75-Saket,
MEERUT

P. Sharan
Retd. Principal, Meerut College

CONTENTS

<i>Chapters</i>	<i>Pages</i>
1. Introduction	1-15
I. The Land.	
II. The People.	
III. Nationalism and Common Features of South-east Asia.	
2. Preliminary aspects of the Constitution	16-39
I. Brief Political History.	
II. Constitutional Development from 1946 to 1963.	
III. Salient Features of the Constitution.	
IV. Amendments of the Constitution.	
3. Citizenship and Federation	40-56
I. Citizenship	
II. The States under the Constitution.	
III. Relationship between the Federation and State Governments	
IV. Other Aspects of Federalism.	
4. The Federal Executive	57-74
I. The Supreme Head of State	
II. The Conference of Rulers	
III. The Cabinet	
IV. Special Powers against Subversion and Emergency Powers.	
V. The Constitutional Position of Yang di-Pertuan (Supreme Head).	

5. Federal Parliament	75-100
I. Composition	
II. Organisation of Parliament	
III. Parliamentary Procedure	
IV. Functions of Parliament	
V. Concluding Observations	
6. Judiciary and Rights of Citizens	101-112
I. Organisation of Courts	
II. Other Aspects	
III. Rights of Citizens	
7. Other aspects of Government and administration	113-130
I. Elections	
II. Local Government	
III. Governmental Administration	
IV. Civil Services	
8. Party Politics	131-159
I. The Alliance Party and the Socialist Front	
II. Other Parties	
III. Party Politics and General Elections upto 1964	
IV. Party Politics and General Elections after 1964.	
V. Party System	

Introduction

I. The Land

Malaysia was formed in 1963 ; at that time Singapore was included in it, but it ceased to be part of Malaysia in August 1965. Malaysia, as distinguished from Malaya, also includes the States of Sabah and Sarawak in North Borneo. Malaya (or Malay) is a peninsula in the South-East corner of the continent of Asia. It lies between 6° and 1° latitudes north of the Equator and between 100° and 105° longitudes east of Greenwich. Modern Malaya (including Singapore) consists of slightly more than 50 thousand sq. miles of the peninsula and some small but vitally important islands like Penang along its coasts. Its northern neighbour is Thailand (formerly called Siam) with which she is connected by both road and rail. Indonesia lies to the west and south. The Malayan peninsula is bounded on the west by the Straits of Malacca ; and its east coast is washed by the turbulent waters of the China Sea. The city (now a separate state) of Singapore is situated at the tip of the peninsula, joined by a narrow causeway.

The Malaya peninsula has coastal plains on the east, and west, with a central mountain range in between. The Borneo

2 *Government and Politics of Malaysia*

area consists of an alluvial coastal plain (largely swampy) and hilly country further inland. The mountains of Malaya follow the line of the Peninsula. It has few hill stations. The peninsula is not more than 200 miles across at its middle. Rivers abound; but they are short and swift. They continuously denude mountain slopes and plains of their rich alluvial soil. For centuries the people have found rivers to be useful agencies for the supply of food, for transport and communication and for sport. The climate is tropical and humid; the average rainfall is about 100 inches in a year.

Much of the attraction of Malaysia lies in its scenery, the contrast between dense forest in the interior and the rice fields of north-west Malaya and the silvery beaches with waving palms of Malaya's east coast. Malaya has been called the land of beauty. There are no dust storms, no hot weathers and the landscape displays a fresh luxuriant greenery. It has, therefore, been described as a comfortable place to live in. Of mineral wealth the mainstay of Malaya has been its world renowned tin. The country is extraordinarily rich in tin deposits. Lead of an inferior variety and iron have also been discovered in recent times. Gold also occurs in small quantities. The soil is fertile; waters are good and virgin tracts are waiting development. Forests have to be exploited; valuable lands are yet to be cleared and planted either with necessary food crops or valuable para-rubber.

Component Units of Malaysia. Penang is an island with an area of about 400 sq. miles, situated at almost the northern extremity of the Straits of Malacca and separated from the main land by about 2 miles of sea. In importance, Penang is second only to Singapore, though Kuala Lumpur the capital of the Federation has since the second World War stolen much of the prominence of this comparatively older city. Kuala Lumpur is also the capital of Selangor, which lies on the west coast of the peninsula, almost midway between Singapore and Penang. It has an area of over 3,000 sq. miles and is a rich and well developed Sultanate of Malaya. The territory nearest to Singapore is the state of Johore, extending across

the peninsula, with an area of 7,330 sq. miles. The settlement of Malacca with an area of about 640 sq. miles is now part of the Federation. Negri Sembilan (with an area of 2600 sq. miles) lies between Malacca and Johore in the south and Selangore in the north.

The state of Pahang, which is situated on the eastern side of the peninsula, comprises an area of about 13,800 sq. miles. Another state which lies on the east coast of the peninsula is Trengganu, bounded by Pahang and Kelantan. Having an area of over 5,000 sq. miles, it has been poorly developed and thinly populated. To the north of Trengganu lies the state of Kelantan bounded on the north by the China sea and on the south by the state of Pahang and on the west by Thailand and the state of Perak. Being comparatively further away from the modernistic tendencies and life of the west coast, Kelantan, Trengganu and to a lesser degree Pahang have been able to preserve a purer form of Malay life and culture than those found in the other states. The state of Kedah is the region best known in the vicinity of Kedah Peak (3,978 ft.). The state of Perlis, the northern-most of Malaya, has an area of 310 sq. miles. Finally, the state of Perak comprises an area of nearly 8,000 sq. miles. It is economically the best developed of them all.¹

II. The People

At the very outset to prevent confusion, Malay should be distinguished from Malayan and Malaysian. A Malay is a person of the Malay race, distinguished by use of the Malay language and belonging to the Muslim religion. A Malayan is a person who lives in Malaya ; he may racially be a Malay, a Chinese, an Indian or a Eurasian. Similarly, now-a-days, a Malaysian is a person of whatever racial origins, who lives in Malaysia. All these three words—Malay, Malayan, and

1. Nadyam Raghavan, *India and Malaya*, pp. 8-14.

4 *Government and Politics of Malaysia*

Malaysian—may also be used as adjectives in corresponding senses.¹

The preliminary results of population census held on 10 June 1980 gave the population of Malaya as 13,435,588 compared with a total of 10,439,430 at the mid-1970 census. The population of Malaya (or of Malaysia) is composite and heterogeneous. Due to immigration of more prolific peoples, the Malaya themselves have come to be a minority in their own land. Before the arrival of European traders in Malaya, there were continual waves of settlers from Indonesian islands. At the time the Portuguese and the Dutch arrived on the scene there was already in Malacca an influential community of Indians also. European contacts with Malaya were mostly via India and in their wake came Indians to help in navigation and trade, and later, in administration. With the arrival of the British, Indian and Chinese immigrants increased rapidly. Sugar plantations, tin mines and rubber estates required a steady supply of cheap labour. The Chinese form an influential community in Malaya today; and they have contributed materially to the building up of modern Malaya.² The population of Malaysia by races, according to 1970 census, was: Malays 4,671,874; Chinese 3,131,320, Indians and Pakistanis 936,341; and others 70,022.

Plural Society and Communal Conflict. 'Communal pluralism is the essential reality of Malaysian society and government. The Malays constitute slightly less than a majority of the nation and the Chinese form a significant 37 per cent. In West Malaysia there is an Indian minority, predominantly Tamil, of 10 per cent. In East Malaysia the Borneo state of Sarawak and Sabah, where Chinese out-number Malay Muslims, the largest of the many indigenous ethnic groups are the Ibans and Kadazans respectively.' To most of its citizens Malaysia is still an abstraction; and its symbols have

1. R.S. Milne, *Government and Politics in Malaysia*, p.1.

2. Nedyam Raghaven, *op.cit*, pp. 17-21.

little emotional meaning to large sections of the population. 'Most Malaysians identify themselves and others by communal categories which take precedence over class, regional, and occupational rubrics.'

All Malays in Malaysia are Muslims; and they communicate among themselves in the Malay language. Race is also a part of Malay's self-identification. They consider themselves the sons of the soil, the native, indigenous people. The Chinese regard themselves as hard-working and progressive, concerned with improving their lot through their own efforts in a competitive and often hostile environment. Though they desire to retain their communal identity and their culture, yet they claim to be loyal Malaysians, entitled to full equality in all respects. The Malays are overwhelmingly rural dwellers, engaged in subsistence farming, fishing and small holdings of rubber. But they control government both at the federal and state levels, and they are predominant in the civil service. In education and modern techniques non-Malays, particularly Chinese, are dominant. Since the identity structure of most Malaysians is communal, politics is naturally organised on that basis. Efforts were made to organise political life non-communally in the early 1950s, but they proved abortive. As a result of that the Alliance Party was a coalition of three communal groupings—the United Malay National Organisation (UMNO), the senior partner; the Malay Chinese Association (MCA), the junior partner; and the Malay Indian Congress (MIC), the main partner. The Alliance provided a dominant party system, but it was not monolithic.

Communal divisions appear not only on specific issues regarding the economic, social and cultural benefits. The problem arises also in the symbols system. The Chief of State is a Malay Sultan, and so are the heads of most of the States. The national language is Malay and the national religion is Islam. The Malays can identify emotionally with the expressive symbols of the polity, but the non-Malays, who

are half the population, cannot do so.¹

Vasil observes: 'The two outstanding features of the Malaysian situation are: one, Malaysia is essentially, what may be called, a bi-racial society; and one of the two main ethnic groups in the country is indigenous and the other immigrant. These have determined in a significant manner the nature of politics and ethnic relationships. Though the country's population consists of Malays, Chinese and Indians (and a number of other smaller ethnic groups), representing the three main peoples of Asia, it is only the Malays and the Chinese who have the numerical strength to play a central political role.' The Malays strongly believe that as they are the only indigenous people the country belongs to them. Malaysia is *Tanah Melayu* (land of the Malays) and its national language, culture, religion and overall image must reflect this fundamental fact; and Malays must rule the country. But the Chinese who are numerous enough, do not accept this view and are inclined to press claims for an equal political status and voice for themselves. Moreover, many Chinese believe that they had contributed more than their share in the development of the country during the period of British rule; therefore, they deserve a certain consideration.²

Milne also says: 'More than anything else, the racial composition of Malaysia is the key to understanding the whole picture. It dictates the pattern of the economy, has helped to shape the Constitution, and has influenced the democratic process and the party system...everything political or economic in Malaysia is dominated, and must be dominated by considerations of "racial arithmetic." With about 36 per cent of Chinese in Malaysia, it is quite unrealistic to adopt restrictive measures such as expulsion, or to prohibit them

1. Milton J. Esman, *Administration and Development in Malaysia*, pp. 17-32.
2. R.K. Vasil, *Ethnic Politics in Malaysia*, pp. 1-2.

from engaging in retail trade. At the same time it is not easy to assimilate the Chinese. Since all Malays are Muslims, assimilation has become more difficult.

'The racial mosaic is made more intricate by the existence of "Indians and Pakistanis" and the large variety of groups which are indigenous to the Borneo territories.' Consequently, there is a racial pattern which defies any simple solution. A parallel is to be found in the complex language pattern. The elite of all races speak English, which was an official language upto 1967 along with Malay. But the language of communication among the common people is "bazaar Malay."¹

III. Nationalism and Common Features of South Asia

Malay Nationalism. The outlook of the average Malay was both too parochial and too inclusive. It was too parochial in that it never envisaged a world greater than that ruled by the Rajah and normally no greater than that ruled by the district chief. It was too inclusive in that any one who professed Islam and conformed to customs was regarded as Malay, whether he was actually born in the peninsula or had come over from Sumatra, Java, Borneo or even the Philippines. "Nationality was not a term of much significance to a Malay. But if the promotion of one's own culture is a form of nationalism there were several examples of this in Malaya both before and after the British "Forward movement" of the 1870s. An effort was made to produce books in Malay, on the lines of the Balai Pustaka (Institute of culture) in Indonesia, dealing with the history, legends and folk stories of Malaya."²

Western rule created revolution in South-East Asia; and growth of nationalism was one of the symptoms of this revolution. But political consciousness was confined to a small

1. R.S. Milne, *op cit.*, pp. 4-5-9.

2. Waddel, *An Introduction to South-East Asia*, p. 139.

minority, so nationalism in South-east Asia could not properly be equated with democracy. In this region the spirit of nationalism fed upon discontent engendered by the wide contrasts between economic progress and general social welfare, between the liberty of western literature and the 'authority of colonial life.' The Japanese had shown that an Asian people were properly capable of learning, and indeed improving upon the techniques of the West.

In Malaya upto the 1930s the British administration was not called upon to make concessions to a nationalist movement, because no such movement existed. The reasons for delay in the awakening of Malayan nationalism were: 1) the political and administrative pluralism that arose out of the division of the Malay peninsula into Straits Settlements and nine Malay states: and 2) prosperity of the people. In Malaya, even at the end of the Second World war, nationalist movement did not exist. However, Western impact and colonial rule created the necessary conditions for the growth of nationalism in South-east Asian countries. 'The idea of nationalism had been the most dynamic of Europe's export to South-east Asia. If the experience of European rule had taught one clear lesson, it was that when a dependent people are brought into contact with ideas of self-government they must sooner or later be given self government.'¹

Brecher rightly observes: 'Perhaps the most important legacy of colonial rule was nationalism. This sounds paradoxical, but it is a cardinal truth about the impact of colonialism. The creation of law and order, along with administrative and territorial unity over fragments of empire, permitted peaceful progress and an awareness of commonality under foreign rule. Economic exploitation over a prolonged period led to mounting resentment among strategic segments of the colonial people. At the same time, economic unification led to introduction of modern communications and transport, which made it possible for distant parts of the realm to come together and

1. Brian Harrison, *South-East Asia: A Short History*, pp. 236-52.

kindle an awareness of common interests. The infusion of Western language provided a medium of direct communication among the new elite of colonial societies. And through the medium came ideas, especially the revolutionary doctrine of national self-determination.¹

According to Pye, the most profound influence of the west in South-east Asia was generally in the realm of government. The colonial regimes provided the framework for the new national entities, which emerged gradually. Colonialism also gave many of the peoples of the region their first feeling of belonging to the same political system and of sharing an identity with others beyond their own local community. Before the reaction to colonialism produced strong nationalist movements, there preceded a period of gradual but significant social and economic changes which affected most societies of South-east Asia. 'Out of the turmoil that attended the clash of cultures of East and West in South-east Asia came vigorous nationalist leaders. During the Japanese Occupation and after World War II, strong nationalist movements were launched in most of the countries of the region.' Colonialism was much more effective in creating the administrative structure of government than in developing responsible democratic politicians.

In Malaya, the Japanese conquest completely disrupted the pre-war colonial society. The only effective anti-Japanese movement in the country was led by the Communists. Using guerilla tactics, the Communists dominated many jungle areas, but with the Japanese surrender, the Communists joined the rest of the Malayans in accepting the return of the British. No general nationalist movement developed in Malaya for nearly a decade after the war, until the Communists in June 1948, launched a campaign of insurrection and terrorism. To suppress the uprisings, again occurring mainly in the jungles, the government had to divert its energies from

1. Michael Brecher, *The New States of Asia*, p. 21.

'the job of building a nation.'¹

Common Features of South-East Asia. All the South-east Asian countries have substantial minority populations of diverse ethnic backgrounds. In some countries, including Malaysia, the ethnic divisions are conspicuous and explicitly recognised. 'This mixture of peoples and cultures is a reflection of the fact that South-east Asia has long been the communications cross-roads of Asia. 'In spite of the diversity born of the melting-pot quality of South-east Asia, the countries of the region have many problems in common. The contemporary theme that now characterizes the entire area is the effort to translate diffuse feelings of nationalism into strong loyalties to the nation. In varying degrees, each country is engrossed in the task of nation-building.

'The problem of nation-building is only part of the large problem of passing rapidly from a backward condition into the world of the mid-twentieth century. In striving to become modern nation-states, the countries of South-east Asia are also grappling with the fundamental dilemma of trying to introduce new ways of life while preserving ancient values and customs. The central concern of present-day South-east governments is to bring economic development and the principal attributes of modern societies to their countries without losing their ancient identities. Thus the conflict between the old and the new, modern outlook and traditional customs, is basic in most of the South-east Asian countries.'²

Among other common factors, the following also deserve to be noted: First, with the exception of Philippines, every country of South-east Asia has felt at some time the influence of Hindu concepts of kingship and they still play an important part in the shaping of men's attitudes towards the government (and the monarch where one exists), notwithstanding the growth of democratic ideas. An important element of Hindu

1. Lucian W. Pye, *South-East Asia's Political Systems*, pp. 27-31

2. *Ibid.*, p.2.

concept of kingship is the near divinity of the monarch, who was sometimes called deva-raj or God-king. Second, except Thailand, every country in South-east Asia has had direct experience of colonial rule. Third, the "new" states are said, by Edward Shils, to have in common the "gap in the social structure", the gap, in other words, between the rich and the poor, the city and the country, the educated and the ignorant.

IV. Economic Basis of Politics

Indian Emigration. India's men and women left Madras and other places in south India for Penang Port Swettenham and Singapore. The exodus was speeded up with the opening up of Malaya for rubber. Other Indians arrived in Malaya for trade, for practising the learned professions, for serving the peninsula in its administration and its people in different walks of life. In June 1951 Malcolm Macdonald, Commissioner-General in South-east Asia, speaking at Singapore dwelt on the great part played by Indians in Malaya, in the building up of the Malayan nation. He also paid a tribute to India's past 'contributions to the development of South-east Asian countries which constituted one of the most remarkable chapters in the history of mankind.'

More than 50 per cent of employees on the rubber plantations were Indians. In 1905, Malay's total production of rubber did not exceed 200 tons, but within 30 years her export had grown to 681,638 metric tons annually. In 1946, the production was 404,000 and by 1950 it rose to 705,000 metric tons. For this great achievement British capital and Indian labour were mainly responsible. Many Indians now own rubber plantations. But Malaya was not, generally speaking, a very happy place for Indians, a large majority of whom were state workers. Labour emigration from India to Malaya went on unchecked till 1938 when the Indian Government imposed a ban which is still in force

1. Waddel, *op.cit.*, pp. 10-12.

on assisted movement of unskilled workers from India to Malaya.¹

Contrast between Malays and Chinese. Nature has done so much for the indigenous people—the Malays—that they never starve. They eat rice, which they can produce with the smallest exertion. But if interest can be created in the job, they can perform prodigies. The Chinese, on the other hand, who came to Malaya from South China, were exceptionally hardy and determined. Their attitudes were fiercely competitive, while the Malays were eminently non-competitive. With their sufficiently large numbers, the energetic Chinese, under British rule, naturally dominated industry and trade, excepting the large share owned by foreigners, particularly the British. The Chinese, therefore, concentrated in the towns while the Malays mostly live in rural areas. Both before and after independence, attempts were made to improve the economic position of the Malays. Schemes were started for training them in business and facilities were given to them for obtaining capital. The 1957 Constitution provided protection to Malays in certain types of occupation. These provisions were retained in the 1963 Constitution.

National income per head in Malaysia is the highest in South-east Asia. But there are differences in the income levels of people living in different parts of the country. In 1961, the annual incomes per head in US dollars were roughly : Malaya 270, North Borneo 230 and Sarawak 180. Nevertheless, the basis for Malaysia's relative prosperity is not secure, because her economy is bound to suffer if she fails to export large quantities of rubber and Malaysia is at present the biggest producer of "natural" rubber, which accounts for about a quarter of the value of the gross domestic product and half of the total export earnings. But so far as tin is concerned, her resources are becoming exhausted. Country's economic plans have attempted to safeguard its economic future in two ways : 1) There has been an attempt at agricultural diversification, by persuading farmers not to depend wholly on rubber but also

1. Nedyam Raghavan, *op.cit.*, pp. 102-04 and 122-23.

to plant such crops as oil palm and pine-apple. (2) The main effort has been aimed at industrialization. Factories have been set up to produce such goods as paints, matches, cigarettes, soap, chemicals, and automobile tyres. Malaya's economic plans have also been extended to include Sarawak and Sabah. 'In the short run, Malaysia's economic situation is better than that of her neighbours.'¹

However, under the *quid pro quo* arrangement of the pre-1969 period there had been only a marginal improvement in the economic position of the Malays. The results of 1969 election clearly indicated that large numbers of Malays were seriously dissatisfied with the *quid pro quo* arrangement, which had secured them only political paramountcy but had denied them an equitable share of economic and commercial power. The Government headed by Tun Razak, therefore, inaugurated a New Economic Policy (NEP) with the over-riding objective to promote "national unity" through its two-pronged strategy of (1) eradicating poverty by raising income levels and increasing employment opportunities for all Malaysians, irrespective of race; and (2) accelerating the process of restructuring the Malaysian society to correct economic imbalance, so as to reduce and eventually eliminate the identification of race with economic function. Programmes for this purpose include the modernisation of rural life, the rapid and balanced development of urban activities, the establishment of new growth centres and creation of Malay commercial and industrial community in all categories and at all levels of operation.

The NEP was incorporated in the Second Malaysian Plan (1971-75). In presenting the Plan to the Parliament on 12 July 1971 the Prime Minister asserted that the aim of the Plan was to create "a viable and thriving Malay industrial and commercial community" and to accelerate employment of Malays and the other indigenous people at all levels of manufacturing to reflect the racial composition of the population. The Plan established a 30 per cent rule, which meant that in 20 years (i.e. by 1990), the Malays and other indigenous "will

1. R.S. Milne, *op.cit.*, pp. 6-8.

own and manage at least 30 per cent of the total commercial and industrial activities. The government also took urgent action to rectify the imbalance in the racial composition of students at various levels."¹

The U M N O leaders consistently impressed upon their constituents that Malaya (i.e. Malaysia) was still Tanah Melayu and sought their allegiance and support on the basis that theirs was the only organisation that could effectively promote this concept. Politics and government, in consequence, have already been completely reorganised and are now being operated on the basis of the following principles: (1) It has been unequivocally established that Malaysia is a country of the indigenous Malays. Its Malayo-Muslim character is sacrosanct and must be accepted by all without question. The non-Malay peoples who intend to continue to live in the country must accept this. (2) The special position of the Malays, which was written into the country's constitution of 1957 as a temporary measure, and the status of their Rulers have now been entrenched into the constitutional-political framework in such a way that they could never again be challenged and threatened by the non-Malay communities through the ballot-box or through other legal political action. (3) Malay unity has been established on a much more solid footing than during the pre-1969 era.

Malay political power is no more to be dependent on the *quid pro quo* arrangement with the non-Malay communities and their communal organisations, especially the MCA; electoral support of the non-Malay communities is no more necessary to maintain the Malay ruling class. (4) Malay political power is no more to be the end in itself as it was during the pre-1969 era. It is now being used to give the Malays a reasonable share of economic and commercial power so as to ensure unity and solidarity among them and maintain their loyalty and support for the present Malay leadership. (5) The Alliance has given place to Barsan National in which the Malay core is provided

1. R.K. Vasil, *op.cit.*, pp 193-98.

by the Malay communal organisations. Non-Malay support for the Front is no more indispensable ; it is no more required to maintain the organisation in power and to enable its leadership to contain and curb extremism within its Malay base. Post-1969 changes in the delimitation of electoral constituencies have given further weightage to Malay vote thus enabling it to return a majority of members to the Malaysian Parliament ; non-Malay voters by themselves can neither vote a government in nor vote one out of power.¹

1. *Ibid.*, pp. 220-23.

Preliminary Aspects of the Constitution

I. Brief Political History

Early Connection with India. Soon after the Pallavas, new influences from (Pala) Bengal and Magadha also reached Malaya (and Indonesia), bringing the Devanagri script and Mahayana Buddhism. By the 7th century there came into bold relief in Malaysia the great Indian Empire of Sri Vijaya. With occasional breaks, Sri Vijaya maintained its rule till at last in the 14th century it fell before a powerful kingdom, Majapahit. It is not improbable, according to some, that the Sailendra Empire, regarded as a Sumatran Empire, had its beginnings in Malaya. For more than 600 years or more it held its dominant position. It traded with India and China, policed the Malayan waters and received shipping tributes. There is little doubt that Sri Vijaya kings were originally colonists from India and had intimate relations with India.

Among the Malayan colonies of Sri Vijaya was Tumasik (known also as Sinhapura or Singoapore), founded about the year 1280. When Tumasik fell, Malacca arose, which had

closer ties with India. Malacca followed Sri Vijaya traditions and tried to improve upon them. In less than a century the village that Parameswara founded developed into a metropolitan sea-port of such eminence that the very name Malacca became almost inter-changeable with Malaya. Indians of this period were not only great merchants, but good navigators and settlers. The importance of Indian residents at Malacca must have been considerable. Under the influence of Indians, Malacca helped in spreading the Arabian religion, but it did not alter the essentially Hindu outlook of the newly converted.

In the period that followed the Malacca Sultanate, direct Indian contacts were severely restricted, first by the Portuguese and then by the Dutch. It was from India that Alphonso d' Albuquerque, the Portuguese Governor of Goa, went and captured Malacca. The Portuguese took Malacca with 800 Portuguese and 300 Indian soldiers. From 1513 to 1641 Malacca was under Portuguese India. It became a centre of Portuguese trade and tyranny in the East. After nearly 130 years Malacca was already tottering when Portugal itself came under Spain. The Dutch then arrived on the scene. Recognising no papal bulls or 'allocations,' they went out in search of trade, and soon extended their influence to the East and to the West. In 1641, they took Malacca and captured Ceylon in 1654 from the Portuguese.

Advent of the British. The English East India Company (which received its charter in 1600) operating from India had officially opened factories in Malaya and in the East Indies, manning them with sepoy and assistants from India. It was in 1771 that Capt. Francis Light, an English naval officer, who had become a private trader, visited Malaya and wrote back to his firm that in return for assistance against Selangor the ruler of Kedah had agreed to give him the concession of a sea-port and to share the monopoly of Kedah trade with the English. From 1786, when Light landed at Penang his Indian soldiers, the settlement became a part of India. In 1805, from a Residency, subject to the Governor of Bengal, Penang, together with Province Wellesley (the territory oppo-

site Penang island acquired by the Company in 1800, subsequently called Province Wellesley) was elevated to a Presidency under a Lt. Governor responsible to the Governor-General of India. During the days of the Company and until about 1873 the Settlements were used as convict stations to which were sent Indians sentenced to transportation for life or for long terms of imprisonment.

After establishing themselves at Penang and Province Wellesley, at Malacca and Singapore, the English penetrated further inland. The businessmen persisted and tried several methods of interfering with the internal administration of some of the states. Parties to domestic quarrels within the States found financiers and supporters from Perak. In 1873, the policy of non-interference with the local Rajas of Malaya also changed. In 1874 the Governor of the Straits Settlement issued a proclamation to the Malay Rajas, Elders and People to make known to them the good wishes of the Great Queen of England. He also dealt with disturbances in several States and insisted on the observance and fulfilment of pledges. The rulers of Malaya were no longer treated as independent sovereigns, or even as allies, but as subjects actual or potential. In 1874, following the Perak example, Selangor was brought under British rule. In 1876 the State of Negri Sembilan had to accept British protection. In 1892, Pahang's bid for liberty was soon put down with the help of Indian soldiers. Trengganu, Kelantan, Kedah and Perlis were brought into the fold soon after. With the commencement of British administration in Malaya, her economy underwent a rapid transformation. There was growth of population, which brought in its train changes in its composition. The Chinese rapidly increased in numbers and became the more prominent section of the Malayan population. Indians also increased though not with the same rapidity.¹

PATTERN OF BRITISH ADMINISTRATION

Malaya was divided into three units for purposes of administration : (1) The Straits Settlement, (2) Federated Malay

1. Nedyam Raghavan, *India and Malaya*, pp. 33-61.

States and (3) Un-federated Malay States. Each of these three units was administered/governed in a different way. Broad details of their administration may briefly be described as follows :

The Straits Settlements. The Crown colony of Straits Settlements was governed by a Governor appointed by the Secretary of State for Colonies. He was advised by an executive and legislative council. While the former consisted of officials, in the latter officials and unofficials had become equal in 1924.

Federated Malay States. The Federation had a Federal Council ; in addition there were the four State Councils and two Conferences which played an important part in framing policy. The first—Residents' Conference—held its meetings at the time of Federal Council meetings, when the Residents came to attend its meetings, at Kuala Lumpur. The other Conference was the Durbar of Rulers. The Federal Council had an official majority and transacted much the same sort of business and with the same procedure as the Legislative Council of the Colony.

The Unfederated Malay States. These included Johore, Kedah, Kelantan and Trengganu. Johore had an executive council and a legislative council under a written constitution. But each of the other States had only one Council, which possessed both the legislative and financial powers. One other unfederated State—Negri Sembilan—had a bicameral legislature, but the Sultan of the State had more powers than any other Ruler. The ruling chiefs and the Resident constituted the upper chamber. The lower chamber was composed of the Resident as President and 8 official and 7 unofficial members.¹

1. S.W. Jones. *Public Administration in Malaya*, pp. 80-6.

The system of indirect rule¹ introduced by the British meant the superimposition of the colonial administration over the indigenous administrations headed by Malay Rulers. It, therefore, created especial difficulties. Under their treaty obligations, the British had to maintain the old form of government and its ruling class in the various States. But for the purpose of efficient exploitation of its resources by Western trading and capitalist interests, political power and policy-making had increasingly to be centralized. The Malays considered this increasing shift towards centralization as not only a threat to the position and powers of the Malay Rulers, but to their own special position as the bumiputra and the status of Malaya Tanah Melaya (land of the Malays). To the Malays, the nine Malay States and their Rulers were the symbols of their separate identity and their special position. As far as the Malay raayat was concerned,

1. In 1873 there were three claimants to the throne of Perak State. One of these sought British help to advance his cause, expressing his willingness to accept a British adviser. With some guidance from the British, he was chosen as Sultan at a meeting of the Perak Chiefs. At that time provision was made for a British resident (and Assistant Resident), whose advice was necessarily to be sought and acted upon (on) all questions other than those concerning Malay religion and custom. This system of residents was afterwards extended to the States of Selangor, Pahang, and Negri Sembilan. These four States (as contrasted with the Straits Settlements) were examples of indirect rule. When the system of indirect rule had been established in four States, there was a tendency for each Resident to go his own way in administration, so a necessity for co-ordination was felt. Consequently the States were formed into a Federation in 1895; but this was not a Federation in the accepted sense of the term. The rulers of the four States agreed to accept a British Resident-General and to follow his advice in most matters. The four Residents were made responsible to the Resident-General, who was in turn responsible to the Governor of the Straits-Settlements.—R.S. Milne, *Government and Politics in Malaya*, pp. 15-6.

at the time, there was no such thing as British Malaya or Malaya.¹

II. Constitutional Development from 1946 to 1963

From 1946 to 1948. There was little idea of Malaya as a political unit, since the ordinary Malay peasant's loyalty was to the Sultan, and even Malays from other States were foreigners to him. However, Malays regarded themselves as the people of the country and the rest (Chinese as well as Indians) as aliens. 'Before the Japanese invasion the Malays were the most unpolitically-minded people in South-east Asia. That blissful state of mind, however, was not to survive the occupation period.'²

The clearly assigned part to Malaya in the Second World War was simply to produce as fast and fully as she could vital materials—rubber and tin. The second World War was a decisive watershed in the political development of all the countries of South-east Asia. When the Japanese forces, following the attack on Pearl Harbour on 7 December 1941 poured into Malaya (and other neighbouring countries) a century of European rule was abruptly ended. The Japanese authority drastically altered the structure of society in each country. New nationalist leaders were prepared to pursue the idea of advancing the prospects of independence. But during the three and a half years of the Japanese occupation, there was much planning as to the nature of the Government's plans for the post-war period. In a White Paper issued in 1946, His Majesty's Government announced their objects to be: (a) to create a Malayan Union for all the separate Governments of Malaya, including Singapore; (b) to devise a Malayan Union citizenship, which would enfold on equal footing all-Malays, Chinese, Indians, etc., who could claim to belong to the country by birth or by a suitable period of residence; and (c)

1. R.K. Vasil, *Ethnic Politics in Malaysia*, pp. 14-5.

2. D.G.E. Hall, *A History of South-East Asia*, p. 753.

in order to bring about these changes to give to His Majesty the King jurisdiction in the Malay States (not possessed before).

In April 1946 a Working Committee composed of representatives of the administration and the U M N O was set up to draft new proposals. Later another committee composed of Chinese and Indians was also set up, but only after the British Government had given its approval to the Working Committee's proposals. In 1947 a revised constitution was drawn up on the basis of the recommendation of the two bodies. Legal sovereignty was handed over back to the Sultans, but they were to govern in accordance with British advice as previously. Singapore was to retain its separate status. Instead of a union all the nine States together with Penang and Malacca, were to form a Federation under a High Commissioner, with Executive and Legislative Councils. In addition to the usual official members, the Executive Council was to have unofficial members chosen from the various races in the country. The Legislative Council was to be composed of 15 official and 61 unofficial members, of whom 31 were to be Malays and the rest Europeans, Chinese, Indians and Eurasians. In the beginning they were to be nominated by the High Commissioner, but election was to be introduced as soon as possible. The federal government was given very extensive powers, while those of the States were correspondingly limited.

The Federation of Malaya Agreement, 1948. R.H. Hickling in his contribution 'An Overview of Constitutional Changes in Malaysia: 1957-77' says: 'The word *constitution* was not properly used to describe the Malayan Union Order-in-Council of 1946, or the Federation of Malaya Agreement of 1948. Neither any constituent assembly framed the Constitution; nor any formal referendum set a popular seal upon its text. It also does not have a preamble, declaring the will of the people. It is evolutionary in its character, as it grew out of the mishaps of the past and the confused constitutional structure of the old Straits Settlements and Malay States. At each step the emphasis was more on the authoritarian

and the utilitarian, than upon the democratic and the cosmetic.¹

The British were unwilling to abandon entirely the two main objectives of their policy in post-war Malaya: the establishment of a strong central government and (ii) the creation of a common citizenship to promote Malayanness among the different peoples. When they decided to abandon the Malayan Union plan under pressure from the Malays it was seen as a great victory for the Malays, who felt jubilant that they had been able to ward off the threat to their position and status in the country. 'The British had been able to do what they had wanted to do with the only difference that they had to do it with the consent of the Malays; the Malayan Union plan had been discarded but the underlying principle of according a legal status with political rights and obligations to the non-Malays was incorporated into the new arrangement based on the federal idea.... The net effect of the change was that Malaya got launched, whether the Malays liked it or not, to a new course where it was inevitable that the Malay view of their position in the country and that of the country as Tanah Melayu would become untenable and it could only be sustained through an authoritarian political system. Once non-Malays had been accorded the right to vote through acquisition of citizenship it was impossible to sustain, in the long run, through representative government the notion that Malaya was a Malay country and that it belonged only to the Malays.'²

Government Under the 1948 Agreement. It consisted of a British High Commissioner, an Executive Council and a Legislative Council (LC). The High Commissioner was required to safeguard both "the special position of the Malays" and also "the legitimate interests of other communities." This was really a delicate task. The LC consisted of official members and a larger number of unofficial members, who were nominated by the High Commissioner. It was intended that in course of time,

1. Suffian et al, *The Constitution of Malaysia: Its Development 1957-77* pp. 2-3.
2. R. K. Vasil, *op. cit.*, pp. 21-3.

some of the unofficial members would be elected. The Federal LC could also make laws on subjects falling within the sphere of States, for the purpose of ensuring uniformity among States. In the matter of finance, the bulk of State revenue came from grants-in-aid, voted by the LC, and not from taxes imposed by the States

At State level, too, there was a corresponding structure, consisting of the ruler, an Executive Council and a legislative body (the Council of States), consisting of official as well as unofficial members. Some important functions, such as land and education, were assigned to the States. In the tradition of indirect rule, the Rulers were required to accept the advice of the High Commissioner, except in matters relating to Muslim religion and customs of the Malays. Among additional provisions for central coordination were the High Commissioner's responsibility for "the safeguarding of the financial stability and credit of the Federal Government" and the existence of British civil servants, who could be transferred from federal to state employment. 'Not only was government highly centralised; it was also colonial government in the last resort directed by the High Commissioner who was responsible to the Colonial Office in London.'¹

At first sight it may seem strange that Malaya did not follow Burma, India, Pakistan and Ceylon in being granted self-government within a few years after the end of the Second World War. The reasons were: (1) Malaya was a separate administration, and not a part of the British Indian Empire. (2) It had been a collection of sub-cultures and the native Rulers were the local authorities; political parties had not yet evolved. (3) There was also the problem of race and language. The Malays naturally hoped and expected to maintain control of affairs in their own country after independence. The Malays suspected all manner of dangers in any transfer of power and even imagined that the British in turn might ultimately be persuaded to favour the Chinese at the expense

1. R.S. Milne, *op. cit.*, p. 31.

of Malayan interests. Malaya woke up to the need to create political organisations. So emerged a United Malay National Organisation (U.M.N.O.) born at Kuala Lumpur in 1946.¹

Form 1951 to 1957. A move in the general direction of more full-fledged parliamentary institutions was made early in 1951 through the introduction of the so-called 'Member' (Portfolio) system, which began to give the Executive Council, then consisting of 12 members under the presidentship of the High Commissioner, something of the look of a Cabinet. But in the prevailing situation the British still controlled the colonial system. Francis G. Cornell commented: "The Malayan nation is as yet little more than a fiction. It amounts to a Federation flag, the nucleus of an army which the Chinese hesitate to join, a citizenship from which at least forty per cent of the Chinese, many of them locally born, are still excluded, and less than ten per cent of the population of seven municipalities and towns in the Federation do not have the right to cast a local government vote...Western democracy is for the most part, still a meaningless concept in Malaya. There have been few evidences of it in action."²

The Constitution of 1957. A Constitutional Commission headed by Lord Reid and consisting of well-known jurists from Britain, Australia, India and Pakistan arrived in Malaya during May-June 1956. After holding a large number of meetings and receiving memoranda from all interested parties it made its recommendations in early 1957. It listed the following four areas with regard to which the Malays had enjoyed a special position in the past, based on the original treaties between their Rulers and the British: (1) Reservations of land and the system of reserving land for the Malays in the States. (2) Quotas for admission to public services. (3) Quotas in respect of the issuing of permits or licences for the operation of certain businesses. (4) Preferential treatment in the grant of certain class of scholarships, bursaries and

1. Ian Thompson, *The Rise of Modern Asia*, pp. 196-97.

2. R. Emerson, *Representative Government in South-East Asia*, pp. 67 and 88.

other forms of aid for educational purposes. The Commission emphasized that they had found little opposition to the continuation of the arrangement, but there was strong hostility among certain people to any increase in the existing preferences and to their being continued for "any prolonged period."

The Commission asserted: 'We are of the opinion that in present circumstances it is necessary to continue these preferences. The Malays would be at a serious and unfair disadvantage compared with other communities if they were suddenly withdrawn. But, with the integration of the various communities into a common nationality which we trust will gradually come about, the need for these preferences will gradually disappear. Our recommendations are made on the footing that Malays should be assured that the present position will continue for a substantial period, but that in due course the present preferences should be reduced and should ultimately cease so that there should then be no discrimination between races or communities.'¹

The Reid Commission laid strong emphasis upon a federal form of constitution, based on parliamentary democracy. Some significant changes took place in 1960s: article 149 was enlarged to cover the non-violent aspects of subversion;(ii) and article 151 (under which, originally, detenu had to be released after 3 months detention, unless the advisory board considered that there was sufficient cause for his detention) was amended. The 12 months limit on any anti-subversion law was abolished; and the positive approval of each House of Parliament to action taken in relation to an emergency, under article 150, within two months of such action, was no longer required. As a result, the executive was equipped with wider emergency powers, subject to lesser parliamentary control, than those contemplated in 1957.

Malaya was the last main country to obtain its independence, which it did on 31 August, 1957. Independence had been delayed on account of the prolonged

1. R.K. Vasil, *op. cit.*, pp. 41-3.

campaign of terrorism by the Malayan Communist Party. The framing of the constitution of Malayan Federation involved some extremely delicate social and political issues. When Malaya gained Merdeka, or independence, it put into effect one of the most novel constitutions of modern times. In an effort to bring the sovereign rulers of the separate States into the Federation of Malaya, the makers of the constitution introduced the idea of an elected "king". The Yang-di-Pertuan Agong is elected by a Conference of the Rulers from among their own members. He serves for a five-year term. This "Paramount Ruler" has limited constitutional powers, and he is charged to guarantee and protect the Islamic religion within the country. Political power resides in the Prime Minister, who is selected from among the members of the lower house of the Parliament. This house, the Dewan Rakyat, consists of 144 elected members. The maximum life of this house is five years, subject to dissolution by the Yang-di-Pertuan Agong on the advice of his ministers. The Senate, or Dewan Negara, represents the interests of the separate States, and its members are elected for a term of six years. In all essential respects, the Malaysian system operates along the lines of the British Parliamentary (or cabinet) system.¹

Formation of Malaysia. On 27 May 1961, Tunku Abdul Rahman, in an address to the Foreign Correspondents Association of South-East Asia, put forward the concept of Malaysia. All the States of the federation of 1957 shared, in substance and in fact, a common status, which was the essence of the original compact. In the early 1960, the notion of a greater federation was revived. 'Nor was this all. Once the concept of equal status among member states was broken, other equally basic concepts fell into hazard. Citizenship itself, the basic brick on which the nation itself was built, became a political pawn; and once this had occurred, the idea of freedom of travel and equal opportunities for employment throughout the federation lost their value.'²

1 Lucian W. Pye, *South-East Asia's Political Systems*, pp. 78-9.

2. Suffian et al, *op.cit.*, pp. 5-9.

Before Malaysia was proposed officially in May 1961, there was much ignorance about the Borneo territories in Malaya and Singapore. The Borneo territories were "less developed". Brunei was viewed as being different, partly because it was ruled by a Sultan, descended from an ancient line, while Sarawak and North Borneo were British Colonies. So far as national income per capita is concerned, the Borneo territories were not too far behind Malaya. In both North Borneo and Sarawak difficulties of physical communication were serious. In respect of literacy, they were far behind Malaya. Moreover, the ethnic patchwork in the Borneo territories is almost terrifying in its complexity, which stood in the way of national unity. However, the inclusion of Borneo territories in Malaysia promised to solve a problem. To some degree the addition of the indigenous inhabitants of these territories would balance the Singapore Chinese majority.

A round of negotiations was held in London in July 1963, just before Malaysia was formed. Singapore was also represented on the Malaysia Solidarity Consultative Committee. By November 1961, the Tunku and Lee Kuan Lee had arrived at an understanding. When agreement had been reached among the four States and with the British, the Government of Malaya amended the Constitution accordingly by passing the Malaysia Act, 1963. In deciding that Malaysia should be brought about by amendment of the existing Constitution of Malaya, the consideration was to ensure the continuity, which might not be questioned internationally.¹

PROVISIONS OF THE MALAYSIA AGREEMENT

Distinctive provisions, concerning Borneo territories, are related to the Head of State, language, religion, immigration, and the special position of the natives. The main provisions were: (1) It was decided that the position of the Head of State for each of the two Borneo territories should be open to

1. R. S. Milne, *op. cit.*, pp. 49-51 and 63-6.

members of all communities. Because their choice was not restricted to Malays (particularly Muslim), they would be in the same position as the Governor of Penang and Malacca in that they would not be eligible to become Yang-di-Pertuan Agong. (2) It was provided that Malay would become the sole official language, in place of English, after a period of 10 years. (and not by 1967 as in Malaya). Consequently, the representatives from Borneo territories could use English in the Federal Parliament until 1973. (3) Although Islam is the religion of Malaysia, it is not so for the States of Sabah and Sarawak. (4) The provisions on immigration are unusual for federation and are also complex. Generally, control over immigration into the new Federation from outside, or between the Borneo States or a Borneo State and the rest of the Federation is a federal matter. But where it is a question of immigration into a Borneo State, with a few exceptions in effect that State has a veto on entry and residence. (5) The relatively large number of seats given to Borneo territories in the Federal Parliament was intended to assure the natives they would not be dominated by the Malays. There are also financial provisions on special grants to the Borneo States and additional sources of revenue have also been assigned to those States.

The constitutional provisions for Singapore's powers and functions were also different from those of the States in the Federation of Malaya. The question of Singapore citizenship was complex and confusing. The financial relations between Singapore and the Federation of Malaya were embodied in a White Paper, given legal force by the Malaysia Act. 'Evidently Malaysia is a much looser form of federation than Malaya was. This is clear from the existence of a number of subjects, such as citizenship, religion, the constitution and jurisdiction of the High Court, where the powers of the Borneo States are different from those of other States; on these subjects the Constitution of Malaysia may not be amended without the concurrence of States concerned.'² Malaysia came into being on 16 September 1963. It consisted of the Federation of

2. *Ibid.*, pp. 68-3.

Malaya, the State of Singapore and the colonies of North Borneo (renamed Sabah and Sarawak).

III. Salient Features of the Constitution

These may be discussed briefly under the following sub-headings :

Written and Rigid. The Constitution is written and contains 161 articles. It is not very lengthy in spite of the complex nature of some of the provisions, particularly dealing with citizenship and the federation (discussed at length in Chapter 3). It covers about 20 printed pages and may be read in about two hours. The Constitution is rigid, because amendments cannot be made as easily as legislative enactments are made. Rigidity is necessary because the Constitution is federal and as such should not be amended by the Federal Legislature alone and with a simple majority. The procedure for amendment has been discussed in the succeeding section.

Supreme Law of the Land. Article 4 of the Constitution clearly lays down : (1) This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void. (2) The validity of any law shall not be questioned on the ground that : (a) it imposes restrictions on the rights mentioned in article 9(2) but does not relate to the matters mentioned therein ; or (b) it imposes such restrictions as are mentioned in article 10(2), but those restrictions were not deemed necessary or expedient by Parliament for the purposes mentioned in that article. (3) The validity of any law made by Parliament or the Legislature of any State shall not be questioned on the ground that it makes provision with respect to any matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws, except in proceedings for a declaration that the law is invalid on that ground or : (a) if the law was made by Parliament, in proceedings between the Federation and one or

more States ; (b) if the law was made by the legislature of a state in proceedings between the Federation and that State. (4) Proceedings for a declaration that a law is invalid on the ground mentioned in Clause (3) (not being proceedings falling within paragraph (a) or (b) of the Clause shall not be commenced without the leave of a judge of the Federal Court ; and the Federation shall be entitled to be a party to any such proceedings, and so shall any State that would or might be a party to proceedings brought for the same purpose under paragraph (a) or (b) of the Clause. Such a provision is essential in view of the fact that the Constitution is federal. In a truly federation constitution, like that of U S A or India, the Constitution is supreme. Its supremacy is maintained by the federal courts in Malaysia as is the case with regard to other federations of the world, of course, excluding that of the Soviet Union, where the constitution is not really federal.

Enacted as well as Evolved. The basic document was enacted in 1948. The formation of Malaysia did not lead to the adoption of a new Constitution. As has already been pointed out in the preceding section, the continuity of the Federation (of Malaya created in 1957) was maintained by making necessary amendments for the formation of Malaysia in 1963. Actually the Constitution of even 1957 was an amended form of the Constitution of 1948. Even that Constitution was not written wholly anew ; it was a continuation of the preceding form of government in an amended form. For a fuller and clearer understanding of the provisions of the Constitution, one must have sufficient knowledge of the constitutional development, particularly beginning with the advent of the British. For these reasons the Constitution is enacted as well as evolved. But it may also be pointed out here that the Constitution of Malaysia was not enacted by any constituent assembly set up for this purpose or even by Malay Parliament. The British Government had an important share in making the Constitution. In short, the people of Malaya did not participate in the making of their Constitution, even indirectly by electing their representatives for this purpose.

The Constitution is Federal. The Federation of Malaya has extensive powers of legislation, so there is a large degree of centralisation. But at the same time on account of varying relationships between the Federation and the State Governments, the nature of federalism is very loose. The Constitution contains a large number of provisions concerning the powers of the Federal Government and the relationships between the Federation and State Governments. This subject has been discussed at length in Chapter 3.

Parliamentary Form of Government. The Head of State in the Federation is Yang-di-Pertuan Agong—the Supreme Ruler—, elected by the Conference of Rulers. There is also provision for a deputy to the Supreme Ruler. The Yang-di-Pertuan Agong is advised by a Cabinet, which is responsible to Parliament. According to Allen the Constitution of 1957 had one unique feature; there was provision for an elected constitutional monarch with a term of office for 5 years. 'This system obviated the jealousies which would have arisen if any of the Sultans had become permanently Head of State. The Conference of Rulers continued and elected their temporary sovereign (Supreme Ruler)...The monarch had to be guided in his public acts by the decisions of his government, subject to his right to be kept informed, to advise and to warn. This was still a somewhat unfamiliar concept in Malaya, but it was intended that in future all Rulers of the individual States should in similar fashion be strictly guided by the decisions of their State Governments.'¹ The position with regards to the federal executive under the Constitution of 1957 has been continued under the 1963 Constitution. Moreover, the executive in the States has now been made similar to that of the Federation, as intended by the Constitution of 1957. The detailed provisions with regard to the Federal Executive and Legislature have been discussed in Chapters 4 and 5 respectively. A brief discussion of State Governments has been given in Chapter 3.

1. Richard Allen, *Malaysia: Prospect and Retrospect*, p. 108.

Federal Judiciary. The judiciary is in keeping with the federal character of the Constitution. There is a Federal Court at the apex and there are High Courts for Malaya, and Borneo Territories. There was also a separate High Court for Singapore. Under the High Courts there are subordinate Courts. The Federal Court and High Courts have the power of interpreting the Constitution as well as that of judicial review. The judiciary is unpoliticised and independent. There is also provision for a Judicial and Legal Service Commission. For details please refer to Chapter 6.

Fundamental Rights and Liberties of Citizens. The Constitution embodies rights of citizens and liberties, which may be described as fundamental, because they can be enforced by the courts. The fundamental liberties of citizens are nine which may be placed in two groups—absolute and limited (i.e., subject to restrictions). These have been discussed in Chapter 6, but the detailed and complicated provisions regarding citizenship have been discussed in Chapter 3.

Provision Regarding Language. According to the 1957 Constitution Malay was to become the sole official language of Malaya, by 1967. This provision was not acceptable to Sabah and Sarawak, because the time for a change-over to Malay from English would have been too short. So a period of 10 years was also allowed to them. i.e. Malay was to replace English by 1973. As a result, the representatives from the Borneo territories could use English in the Federal Parliament until 1973 and English could also be used until 1973 in the two Legislative Assemblies or for other official purposes.

Position of Religion in Malaysia. According to article 3 Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of Federation. It is not the religion of the States of Sabah and Sarawak. Subject to the Constitution, all rights, privileges prerogatives and powers enjoyed by a Ruler as Head of that religion are unaffected and unimpaired; but in any acts, observances or ceremonies with respect to which the Conference of Rulers

has agreed that they should extend to the Federation as a whole each of the other Rulers in his capacity of Head of the Muslim religion authorises the Yang di-Pertuan Agong to represent him. The Constitutions of the States of Malacca, Penang and Singapore each make provision for conferring on the Yang di-Pertuan Agong the position of Head of the Muslim religion in that State.

About the position of Islam Ahmad Ibrahim says: 'The early Malay State Constitutions—written or unwritten—show traces of the traditional Islamic polity. The Sultanate was the result of the assimilation of the spiritual and religious traditions originally associated with the institutions of the caliphate and with purely temporal authority that was the Sultan.... Even before Merdeka it was found necessary in practice for the Malay States to act in concert in certain religious matters. In 1940 the Conference of Rulers appointed a Standing Committee consisting of the Keeper of the Rulers' Seal as Chairman and two representatives from each Malay State to advise the Conference on religious matters with a view to achieving where possible uniformity throughout the Federation.'

The constitutions of the Malay States contained provisions that required that only a person of the Malay race who professed the religion of Islam could be appointed its Menteri Besar but after Merdeka these provisions were amended to enable a Ruler to appoint a non-Muslim provided that in the Rulers' judgment he is likely to command the confidence of the majority of the members of the Legislative Assembly. The Rulers of the Malay States and therefore the Yang di-Pertuan Agong, who is chosen by the Rulers from among themselves, must necessarily be Malays professing the religion of Islam, but there is nothing in the Federal Constitution which provides that the Prime Minister or any Minister or Federal high official must be a Muslim.

The jurisdiction given to the State and to the Shariah courts is limited. Under the present constitutional structure the Sultan in theory may act in his discretion in the perfor-

formance of his functions as Head of the Muslim religion, and the Sultan has a great deal of influence on the appointment of the religious officials, especially the Mufti, and the direction of the religious affairs in the State. A step to coordinate the administration of Islamic affairs was taken on 17 October 1968, by the establishment of the National Council for Islamic Affairs, by the Conference of Rulers. The Council has a Committee of Muslim scholars known as the Fatwa Committee, which considers matters pertaining to Islamic laws. The Council has also set up a number of committees to coordinate and increase the efficiency of Islamic religious activities in all the States. These are: (a) a task force to study the collection, administration and distribution of monies from Zakat, Fitrah, Bait-ul-mal and wakaf; (b) a committee to study the conditions of the Shariah courts and the position of Kathis; (c) a committee to study and streamline the laws pertaining to marriage and divorce; and (d) a committee to fix the first day of Ramadan and the first day of Shawal and to arrange Islamic calendars.¹

As a result of Ayatullah Khomeini's triumph in Iran, there followed an upsurge of Islamic zeal in most of the Muslim countries of the world. But in Malaysia, which is defined as a Muslim State by its Constitution, the Prime Minister Datuk Hussein, who headed a multiracial and multi-religious coalition reflecting the country's diversity, was also worried about the challenge from Islamic zealots. However, he remarked: "These people are cranks, dangerous cranks. We need missionaries but not fanatics." The problem went beyond containing a few misguided people, because of the political forces only too eager to seize upon Islamic slogans raised by zealots. To quote Datuk Hussein, "Partly Islam is getting at the (ruling) coalition," raising familiar charges of impiety, high living in high places, with cash

1. Suffian et al, *op. cit.*, pp. 47-60.

acquired by corrupt means, etc.¹

Other Important Provisions. The Constitution of Malaysia also contains provisions with regard to the following: (1) Public Service, (2) Local Government, (3) Elections and (4) Emergency. The first three have been discussed in Chapter 3 and the fourth in Chapter 4.

IV. Amendments of the Constitution

Methods of Amendment. The Constitution provides three methods of amendment; these are: (1) by an Act requiring simple majority; (2) by an Act requiring a two-thirds majority in both Houses of Parliament at the second and third readings; and (3) by an Act which having satisfied the conditions in (2) further obtains the consent of the Conference of Rulers. The second method is the general method employed with respect to the majority of the constitutional provisions; and the third method directs itself to matters relating to the Conference of Rulers, the federal guarantee of rulers and the special position and privileges of the Malays.

Substantially the form and substance of the Federation of Malaya Constitution remained (even after the formation of Malaysia) and there was no change effected in respect of the original States. But the division of powers between the Federal Government on the one hand and each of the State Governments of Singapore, Sabah and Sarawak on the other hand is considerably different. The State List (for Sabah and Sarawak) is more extensive; for Singapore it was even more so. Special provisions for the natives in Sabah and Sarawak, and immigration are given in the Constitution. The constitutional guarantees of State Constitutions are more definite in respect of Sabah and Sarawak. With the incorporation of Sabah and Sarawak a fourth method of amendment was introduced. This requires a two-thirds majority in both

1. Di'eerp Mukherjee, '*Upsurge of Islamic Zeal*', Times of India, 30 May 1979.

Houses at the second and third readings, and further, the consent of the Governor of the State concerned. The subject matters which call for this process are provided for in article 161E and relate to citizenship, immigration, the constitution and jurisdiction of the High Court in Borneo, appointment, removal and suspension of judges of that Court, the State Legislative List, the Federal-State financial arrangements, religion, official language, and the allocation to the State of representatives in the House of Representatives before the end of August 1970.¹

Amendments of the Constitution. The violence that erupted in Kuala Lumpur on 13 May 1969 led to the breakdown of the Constitution. The whole of the legislative structure of the Constitution was virtually suspended and the whole of the executive authority of the Yang di-Pertuan Agong was delegated to one man, the Director. On 9 October 1969 the National Operations Council published its report on the May 1969 communal explosion. It asserted that the Malaysian Constitution contains certain "entrenched provisions" which represent binding arrangements between the various races in this country, and constitute the foundation, on which the constitutional structure such as fundamental liberties, the machinery of government and a score of other detailed provisions are built. If these entrenched provisions are in any way weakened, the entire constitutional structure is endangered and with it the existence of the nation itself. It was the failure to understand this and the irresponsible treatment of these entrenched provisions that constituted one of the primary causes of the disturbances on 13 May 1969.

Restoration of the constitutional government was a difficult task. However, it was tackled in two ways—legislative and non-legislative. The first involved a constitutional amendment. So at the beginning of 1971, the Government initiated moves to amend the constitution. Presenting the Constitutional (Amendment) Bill to the Parliament on 23

1. See Sufflan et al, *op cit.*, pp. 175-76.

February 1971, Tun Razak, the Prime Minister, asserted that the two broad objectives of the changes were : (1) to remove certain sensitive issues from the realm of public discussion so as to ensure the smooth and continuing functioning of parliamentary democracy, and (2) to correct racial imbalance in certain sectors of the nation's life. Therefore, the amendment sought : (1) to empower the Parliament to pass laws prohibiting the questioning of the constitutional provisions relating to national language, special position of the Malays, the sovereignty and status of the Malay Rulers, and citizenship ; (2) to revoke the immunity from judicial proceedings enjoyed by members of Parliament and state assemblies with regard to what they said in the legislature ; and (3) to vest the Yang di-Pertuan Agong with the power to direct any university or college or post-secondary educational institution to reserve for Malays and other natives certain proportion of places in selected courses of study.

As an emergency measure, the Sedition Act of 1948 was amended in order to make it seditious to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the citizenship provisions of the Constitution together with those articles dealing with the national language, the reservation of quotas in respect of services, permits, etc. for Malays and natives of Borneo states and the Rulers' prerogatives. 'That in itself was bad enough. The Amending Act went even further, so that it became (and remains) a crime for even a member of the Dewan Ra'ayat, acting in accordance with normal parliamentary procedure, to address the House in such a manner as to question the existence of those protected subjects.' Whether this gag upon discussion would work to a tolerance and acceptance of article 153 remained to be seen. The amendment of 1971 was the negative solution to the problems posed by article 153. A positive solution was provided by the establishment of National Operations Council (1969) and a National Consultative Council (1970), as instruments of national discussion and reconciliation.

The Reid Commission was required to provide for the safeguarding of the special position of the Malays and the legitimate interests of the other communities. With the amending legislation of 1971, article 153 appeared to be entrenched, a permanent feature of the Constitution, whose existence could never be questioned. (R. H. Hickling).¹ With Singapore's departure the total number of elected members fell. In 1973 a re-adjustment of State representation took place, following upon the carving out of the State of Selangor and the Federal Territory, entitled to return 5 members. The total number of representatives from States was 139, distributed as follows : Perlis 2, Malacca 4, Negri Sembilan 6, Trengganu 7, Pahang 8, Penang 9, Selangor 11, Kelantan 12, Kedah 13, Johore 16, Sabah 16, Perak 21, and Sarawak 24.

A constitutional amendment Bill was passed by the Federal House of Representatives in 1981 by 118 votes to 12. The main effect of the Bill would be to empower the Head of State to declare a state of emergency on the ground that there is an imminent danger of breakdown in law and order or a threat to national security and to issue declaration of emergency and to promulgate ordinances when both Houses of Parliament are not sitting, such actions not being challengeable in any court. Other amendments included an enabling clause empowering Parliament to legislate for the confiscation of property used in subversive activities which may undermine national security. Bodies which criticised the constitutional amendments as an erosion of parliamentary democracy included the Malayan Bar Council and the African group.

1. See Sultan et al, *op. cit.*, pp. 12-24.

Citizenship and Federation

I. Citizenship

Brief Background. Because of the diversity of ethnic communities in Malaya (and later in Malaysia), the question of citizenship has been an important aspect of the economic and political life of the people. In order that the provisions regarding citizenship in the present constitution may be better understood and properly appreciated, we propose to give here a brief background. Before the formation of the Malayan Union (Federation), the citizenship proposals provided that citizenship could be acquired by having been born locally (in Malaya or Singapore) or having resided locally for a certain period of time. The provisions were to be the same for the Chinese, Indians, and others as they were for Malays. In any future system of democratic elections, this would have increased the voting power of non-Malays compared with the Malays. But the British Secretary of State spoke of "the need to promote the sense of unity and common citizenship which will develop the country's strength and capacity in due course for self-government within the British Commonwealth."¹

1. R. S. Milne, *Government and Politics in Malaysia*, pp. 29 and 38.

One of the interesting features of the 1957 Constitution was the "bargain" between the UMNO and MCA, which set out the political framework within which the racial groups were to operate. One broad assessment of the situation was that the price to be paid by non-Malays for full participation in the political activities of the Federation was acceptance of certain forms associated with Malay traditions. The functions assigned to the Rulers, the choice of Islam as the state religion, the decision that from 1967 the national language—Malay—should be the sole official language were part of the "bargain". In exchange, non-Malays benefited from further relaxation in citizenship provisions, which had already been altered in favour of non-Malays in 1952. After the formation of Malaysia, the Malays were to maintain their political ascendancy by the retention of some of the traditional Malay features of government, such as the Rulers, through advantages in the civil service, and by their greater voting power. The Chinese were to have the citizenship qualifications relaxed, which was to gradually increase their electoral power. Politically, the Chinese influence was to increase and it was thought that the Malays were to be encouraged to become more active economically.

Provisions in the 1963 Constitution. The three methods of acquiring citizenship are: (1) Article 14 provides that certain categories of persons born before Malaysia Day and certain categories of persons born after Malaysia Day are entitled to citizenship by operation of law. (2) *Registration.* Any married woman whose husband is a citizen is entitled to have herself registered if such persons have resided in the Federation for an aggregate of 5 years. (3) *Naturalization.* The Federal Government may, upon application, grant a certificate of naturalization to any person if satisfied that he has resided in the Federation for an aggregate of not less than 10 years in the 12 years immediately preceding the date of application.

The Constitution also makes provision for termination of

citizenship by (a) renunciation, (b) deprivation of citizenship on acquisition of foreign citizenship, and (c) deprivation of citizenship by registration or naturalisation. The importance of citizenship has been stressed by the Government over recent years by the introduction of various legislative measures providing for special benefits to citizens alone. For example, the Employment (Restriction) Act was introduced in 1968 to restrict the employment of non-citizens. Since Singapore has become a separate independent State, the provisions regarding its citizens in Malaysia are not being discussed here.

II. The States Under The Constitution

Constitutional Provisions in Part V. Subject to the precedence of the Yang di-Pertuan Agong and his consort, the Rulers and Governors of the States take precedence over all other persons; and each Ruler/Governor in his State takes precedence over the other Rulers and Governors. The Federation guarantees the right of a Ruler of a State to succeed and to hold, enjoy and exercise the constitutional rights and privileges of Ruler of that State in accordance with the Constitution of that State.

If it appears to Parliament that in any State any provision of this Constitution or of the Constitution of the State is being habitually disregarded, Parliament may, notwithstanding anything in this Constitution, by law make provision for securing compliance with those provisions. Further, if at any time the Constitution of any State does not contain the provisions set out in Part I of the Eighth Schedule with or without the modifications allowed under Clause (5) (hereinafter referred to as 4th essential provision) or provision substantially to the same effect or contains provisions inconsistent with the essential provisions, Parliament may, notwithstanding anything in this Constitution, by law make provisions for giving effect in that State to the essential provisions or for removing the inconsistent provisions. The

validity of any proceedings in the Legislative Assembly of any State can not be questioned in any court. No person is liable to any proceedings in any court in respect of anything said or any note given by him when taking part in the proceedings of the State Legislative Assembly or of any committee thereof. Further, no person is liable to any proceedings in any court in respect of anything published by or under the authority of the State Legislative Assembly.¹

Strong Central Government. The Report of the Federation of Malaya Constitutional Commission, 1957 had recommended the "establishment of a strong central government, with the States and Settlements enjoying a measure of autonomy." The Constitution stressed the first of these requirements rather than the second. The minor role of the States may be seen in their restricted control over amendments. Generally speaking, the Constitution may be amended by an Act of Parliament supported on both the second and third readings by the votes of not less than 2/3rds of the total number of members of each House. No part of the amendment process specifically gives a role, and a check to the States as such. Apart from the Borneo States, the only exception to the general rule that a particular State does not have a "veto" to protect itself against unwelcome constitutional amendments is that the physical boundaries of all the States are fixed, and may not be changed without the consent of the State, expressed in a law passed by the legislature of that State. Under the Constitution of Malaysia so far as the Borneo States are concerned, the State itself must consent to amendments on certain subjects before they can be passed. The Governor of the State concerned must concur, and he is required to act on the advice of the State Governments.

The constitution has no specific provision for secession. However according to one authority, the "new" states

1. *Articles 70 and 72.*

admitted to the Federation i.e. Berneo States, can dissociate from the Federation by an Act repealing, by a 2/3rds majority, the constitutional amendments by which they were admitted. On 9 August 1965, Singapore's separation from Malaysia was effected by a constitutional amendment, which was passed in each house of Parliament without any opposition.

In the field of legislation, as we shall see in the next section, the Federal Government has more substantial powers than the States. Powers over education, labour, health and social security granted to Singapore had placed it in a position of "semi-autonomy" not approached by the other States. Even the additional powers given to the Borneo States are not so important as those were for Singapore. It should also be noted that the Federal Government enjoys 'preference' in the concurrent list, since the federal law overrides the State law, even if it is passed after the State law. The Federal Government has a number of controls over the States. The financial arrangements of the Federation also underline the centralising tendencies of the Constitution. Detailed relationship between the Federal Government and State Governments in all the three fields—legislative, financial and executive (administrative)—have been discussed in the following pages.

State Executive. The Ruler or the Governor is the head of the executive in each State. In most States the Ruler succeeds by primogeniture, but there are some exceptions. The Rulers of the nine States of Malaya (excluding the former Straits Settlements of Penang and Malacca) are chosen by different methods, laid down in State Constitutions. The Governors of Malacca, Penang and Sarawak and the Ruler (called Yang di-Pertuan Negara) of Sabah are chosen by the Supreme Head, acting in his discretion, but after consultation with the Chief Minister of the State concerned. Their appointment is for a term of 4 years, although a Governor may be reappointed. The nine Rulers hold office for life, unless they become unfit.

The heads of all the 13 States are constitutional heads; they are bound to act on most matters in accordance with the

advice of their respective Executive Councils (E Cs), in the same way as the Supreme Head does on the advice of the Cabinet. While in Sarawak it is called the Supreme Council, in Sabah it is known as the Cabinet. The Chairman of the EC is the *Mentri Besar* i.e. the Chief Minister in the States which do not have a Ruler. The E C is responsible to the State Legislative Assembly (L A), wherein it must command a majority. When it loses the majority it must either resign and be replaced by another EC, which can obtain a majority, or the Ruler/Governor must dissolve the L A and order fresh elections.

State Legislatures. In each State there is a unicameral legislature, usually called the Legislative Assembly. In the States of Malaya, the membership ranges from 12 (Perlis) to 40 (Perak). When Malaysia was formed the L A of Sabah consisted of 18 members, indirectly elected through the District Councils and the Residency Advisory Councils, three ex-officio members (the State Secretary, State Attorney-General and State Financial Secretary) and five nominated members. In 1964 the number of indirectly elected members was raised to 32 and the ex-officio members were removed from the Assembly. The Sarawak legislature, called Council Negri, has now evolved into an entirely elected body, except for 3 ex-officio members—the State Secretary, State Financial Secretary and the State Attorney-General. The number of elected members is now 36; all of them are indirectly elected through District Councils and Divisional Advisory Council.

The Constitution stipulates that each State L A shall consist of such number of elected members as the Legislature may by law provide; and the number shall be the same as or a multiple of the number of federal constituencies of each State. The number of members in the State L As in 1974 was: Johore 32, Kedah 26, Kelantan 36, Malacca 20, Negri Sembilan 24, Pahang 32, Perlis 12, Penang 27, Sabah 48, Sarawak 48, Selangor 33, and Trengganu 28. The multiple varies from State to State; for example, it is 2 in Kedah (13×2), 3 in

Kelantan (12×3), 4 in Negri Sembilan (6×4), 2 in Sabah (16×2) and 2 in Sarawak (24×2). The powers of the States are very much limited; but the State ECs are responsible to LAs on the pattern of the Federal Government. Their procedure is also modelled on that of the Federal Parliament. Most Stage Legislatures meet only four or five times a year and for very short sessions, except the budget one.

III. Relationships between the Federation and State Governments.

Distribution of Legislature Powers. Like India, there are three lists in Malaysia—Federal, State and Concurrent. Parliament may make laws for the whole or any part of the Federation; and the legislature of a State may make laws for the whole or any part of the State. Parliament has power to make law with respect to any of the matters enumerated in the Federal or the Concurrent List and the legislature of a State may make laws with respect to any of the matters included in the State and the Concurrent Lists. Parliament may also make laws with respect to any matter enumerated in the State List, for the following purposes only: (a) promoting uniformity in the laws of two or more States; (b) if so requested by the Legislative Assembly of any State; and (c) implementation of any treaty, agreement or convention between the Federation and any other country. The provisions are quite similar to those in the Constitution of India on this subject.

Power of Parliament to make laws with respect to a matter enumerated in the Federal List includes power to authorise the Legislatures of the States, or any of them, subject to such conditions or restrictions (if any) as Parliament may impose, to make laws with respect to the whole or any part of that matter. A State law, made under authority so conferred by Act of Parliament, may, if and to the extent that the Act so provides, amend or repeal (as regards the State in question) any federal law passed before that Act. Any matter, with respect to which the Legislature of a State is for the time being

authorised by Act of Parliament to make laws is to be treated as regards the State in question as if it were a matter enumerated in the Concurrent List.

The Legislature of a State has power to make laws with respect to any matter not enumerated in any of the Lists, not being a matter in respect of which Parliament has power to make laws. Thus the residuary power of legislation, unlike India, vests in the State Legislatures. In so far as any law made by Parliament or any regulation made in pursuance of such a law restricts the right of a state or its residents to the use for navigation or irrigation of any river wholly within the State, it shall not have effect in that State unless it has been approved by a resolution of the Legislative Assembly of that State supported by a majority of the total number of its members.

When it appears to the presiding officer of either House of Parliament or of the Legislative Assembly of any State that a bill or amendment to a bill proposes a change in the law relating to any of the matters enumerated in the Concurrent List, or to any of the matters enumerated in the State List with respect to which the Federation is exercising functions in accordance with article 94, he has to certify the bill or amendment. A bill or amendment so certified is not to be proceeded with until four weeks have elapsed since its publication, and unless the presiding officer is satisfied that the State Governments, or as the case may be, the Federal Government, have been consulted, on the ground of urgency.¹

Extent of Executive Authority. The executive authority of the Federation extends to all matters with respect to which Parliament may make laws; and the executive authority of a State extends to all matters with respect to which the Legislature of that State may make laws. Further, the executive authority of the Federation does not extend to any matter enumerated in the State List, except in so far as is provided in articles 93 to 95, nor to any matter enumerated in the Concurrent List, except in so far as Federal or State law confers

1. Part VI, *Articles* 73-79.

executive authority on the Federation with respect to any matter enumerated in the Concurrent List. So far as law made under article 76 (4) makes provision for conferring executive authority on the Federation, it cannot operate in any State unless it is approved by a resolution of the Legislative Assembly of that State.

Arrangements may be made between the Federation and a State for the performance of any function by the authorities of the one on behalf of the authorities of the other and such arrangements may provide for the making of payment in respect of any costs incurred under the arrangements. Where any functions are conferred by federal law on any authority of a State the Federation has to make such payments to the State as may be agreed between the Federation and the State or as may in default of agreement be determined by a tribunal appointed by the Lord President of the Federal Court. It is also laid down that the executive authority of every State is to be so exercised : a) as to ensure compliance with any federal law applying to that State ; and b) as not to impede or prejudice the exercise of the executive authority of the Federation.¹

Above provisions are general in character, broad in scope and simple in language. In this respect they differ from the detailed and complicated provisions contained in the Constitution of India. The fact that not only the Federation may confer some executive authority on a State, but the States may also confer executive authority on the Federation shows that the States retain a part of their sovereignty and have an equal status with the Federation like parties to a contract.

Distribution of Financial Burdens. Unless provided otherwise by the Constitution, the burden of expenditure is to be borne : (a) by the Federation, if the expenditure results either from federal commitments or State commitments undertaken in accordance with federal policy and with the approval of the Federal Government ; and (b) by the State or States concerned if the expenditure results from State commitments undertaken

1. *Articles 80-81.*

by the State or States on its or their own authority. Here again the constitutional provision is the shortest possible and very simple in language. This is in striking contrast with the division of financial resources (and burdens) in the Indian Constitution.

Sources of Revenue Assigned to the States. Part III of the Tenth Schedule enumerates : (i) toddy shops ; (ii) lands, mines and forests ; (iii) licenses other than those connected with mechanically propelled vehicles, (iv) entertainment duty ; (v) fees in courts other than federal courts ; (vi) fees and receipts in respect of services by departments of State Governments ; (vii) revenue of town boards, town councils, rural boards and other local authorities ; (viii) receipts in respect of water supplies ; (ix) rent on State property ; (x) receipts from land sales and sales of State property ; (xi) fines and forfeitures in courts other than federal courts ; (xii) zakat fitrah, bait-ul-mal, etc. and (xiii) treasure trove.

National Development. If, after a recommendation from an expert committee and after consultation with the National Financial Council, the National Land Council, and the Government of any State concerned, the Supreme Head of the Federation is satisfied that it is conducive to the national interest that a development plan be put into operation in any area or areas in one or more of the States, the Supreme Head may after publishing the plan, proclaim the area as a development area ; and thereupon Parliament has power to give effect to the development plan or any part thereof, notwithstanding that any of the matters to which the plan relates are matters with respect to which only States have power to make laws.

The Federal Government may from time to time require the reservation, for the purposes of a development plan, to such extent as it may specify, of any land in a development area which is not occupied by private persons ; but any diminution, in consequence of the reservation, of the annual revenue received by a State is to be made good to the State

by the Federation. All income received by the Federation through the operation of a development plan is to be applied : first, for the provision of capital and the meeting of working expenses of the plan ; second, for the repayment to the Federation of any expenditure incurred by the Federation in operating the plan ; and third, the balance for payments to the State (or States) in which the development area is situated. If It is agreed between the Federal Government and the Government of any State which includes the whole or any part of the development area that any expenditure incurred in operating the development plan is to be met by the State, any expenditure so met is to be repaid to the State and the repayment ranks *pari passu* with the repayment to the Federation of any expenditure incurred by the Federation.¹

Finally, the Federal Government may conduct such inquiries (whether by commission or otherwise), authorise such surveys and collect as well as publish such statistics as it thinks fit, notwithstanding that such inquiries, surveys and collection and publication of statistics relate to a matter with regard to which the Legislature of a State may make laws. It is the duty of the Government of a State and of all officers and authorities thereof, to assist the Federal Government in the execution of its powers under this article ; and for this purpose the Federal Government may give such directions as it may deem necessary.

The executive authority of the Federation also extends to the conduct of research, the provision and maintenance of experimental and demonstration stations, the giving of advice and technical assistance to the Government of any State and the provision of education, publicity, and demonstration for the inhabitants of any State, in respect of any of the matters, with respect to which the Legislature of a State may make laws and the agriculture and forestry officers

1. Article 92.

of any State have to accept any professional advice given to the Government of that State.¹

IV. Other Aspects of Federalism

Critical Observations. In the words of R.S. Milne: 'A glance at the lists is sufficient to show that the federal government has more substantial powers by far than the States. The main powers retained by the States are over the development of natural resources, namely land (including mining), agriculture and forestry, but it will be seen later that the federal government is also concerned with land. Even the additional powers given, (to) the Borneo States are not so important....' In regard to matters included in the concurrent list, the federal government has precedence. If there is any conflict between a federal law and a state law on an item in the concurrent list, the federal law prevails, even if the state law was passed after the state law. In this respect the position in Malaysia is similar to that in India.

'There are a number of other clauses in the Constitution permitting the federal Parliament to legislate on matters which appear in the list of state functions, for instance, when concluding treaties with other countries, for promoting the uniformity of state laws, and so on. After a declaration of Emergency, the federal Parliament may make laws with respect to any matter in the state list, except matters of Muslim law or the custom of the Malays, or with respect to any matter of native law or custom in a Borneo state. This mechanism was used in September 1966, the dealing with a constitutional crisis in Sarawak.'

The Federal Government has the power to exercise several controls over the State Governments. These have already been pointed out in the preceding section. In addition to those controls, 'a measure of indirect control results from the fact that some of the officials working for the States and on their civil service

1. Article 93.

establishment are actually employees of the federal government, dependent in the last resort, on it for promotion. The federal government may also undertake inquiries and surveys in the states. It controls borrowing by the states. Also, while a Proclamation of Emergency is in force, the executive authority of the federation extends to any matter within the legislative authority of a state and to the giving of directions to the government of a State and or to any of its officers.'

Provisions similar to the above exist in the Indian Union and, to some extent, in a much larger degree. Members of the All-India services occupy most of the higher positions in the States. During the proclamation of an emergency, the Union Government exercises much greater control over the State Governments. Moreover, economic planning is largely controlled and directed by the Planning Commission and the Union Government. However, in India there are various methods to ensure cooperative federalism. In the same way cooperation between the federal government and the States is ensured in Malaysia in several ways. These may briefly be stated as: (1) The executive authority of a state is to be so exercised as to ensure compliance with any federal law applying to that State and so as not to impede or prejudice the exercise of the executive authority of the Federation. (2) The representatives of the federal government and the States constitute the two important policy-making bodies: (i) The national Land Council and (ii) the National Council for Local Government. Their policy decisions are binding on the federal government as well as the State Governments excepting the Borneo States, whose representatives do not have the right to vote in those bodies. (3) The National Finance Council is constituted on similar lines, but it does not make binding policy decisions.

'When viewed as a whole the powers of the federal government over the "original" eleven states, are truly formidable. Yet the federal Prime Minister on one occasion lamented that the ultimate weapon was missing. In September 1961, he

deplored the fact that the Trengganu state government, which was inactive and did not call meetings of the state Assembly and the state Executive Council as often as it should, could not be adequately disciplined by the federal government, which had no power to suspend the state government and take over its functions, as the Indian federal government is empowered to do—and has actually done—in India.¹ The constitution of India explicitly provides for the failure of constitutional machinery in a State. The President may issue a proclamation of emergency and bring the State under presidential rule.

The Constitution's financial provisions have indeed made Malaysian Federation one of the strongest central governments from the financial point of view. If comparisons are made between Malaysia's financial arrangements with those of other federal systems such as those of the United States, Canada and Australia, it will be noted that the Malaysian financial system is a very strongly centralised one. The Federal Government, for instance, is vested with the power and responsibility to obtain and collect all the major revenues. All these major taxes such as income tax, customs duties and licences from motor vehicles, which in most federations are also available to the states, are not available to the State Governments in Malaysia. By the same token, the Malaysian Constitution also provides for all major areas of expenditure to be borne by the Federal Government.

Various reasons for the financial strain on the States are: (i) State Government revenues are not as elastic as the Federal Government's revenue. (ii) The State Governments' operating expenditure to a certain extent is directed by federal policies, particularly in regard to the revision of salaries. (iii) The benefits of several kinds of development expenditure or investments have mainly accrued to the Federal Government in the form of income tax and export duties related to the output of these investment projects. (iv) Although the costs of goods and

1. R.S. Milne, *op. cit.*, pp. 77-8.

services have increased due to inflation and have raised the budget expenditure of State Governments, similar increases in revenue due to inflation have not benefited the State Governments. (v) Although the Federal Government provides the bulk of the financing for development expenditure undertaken by States yet the maintenance of these projects has to be provided by the State Governments. (vi) The tax collection machinery in the State Governments is not as well developed as the better staffed Federal Government's tax system....(Tan Sri Dato and Abdullah Bin Ayub).¹

Federal-State Relations in Practice. In the Constitution land is one of the subjects in the State List, but most of the responsibility for opening up new land for settlement has been given to the Federal and Development Authority (FLDA). If the Federal Land Council formulated explicitly a land policy empowering the FLDA to extend its operations to original States, irrespective of their wishes, it could do so, if necessary, by force. In the beginning, the government of Kelantan refused to accept it, and went ahead with its own land settlement scheme. But since benefits of any schemes undertaken by the FLDA go to the inhabitants of the States, this factor induced the government of Kelantan to allow the FLDA to operate in its territory. A dispute arose between the federal government and the state government of Kelantan over the construction of a bridge. The state government wanted a loan from the federal government for its construction but did not agree to submit its plans to the Public Works Department of the federal government. The federal government refused the loan and the state government constructed the bridge out of its own funds.

A dispute arose over the appointment of the Sarawak Head of State. The ruling Alliance Party in Sarawak wanted a Dayak (prominent leader of one of the Dayak parties forming the Alliance) to be Head of State. But the Prime

1. See Suffian et al, *op. cit.*, pp. 306-12.

Minister of the federal government maintained that in accordance with a previous agreement if the Chief Minister was a Dayak, the Head of State must be a Malay or Melanau. A compromise was later arrived at by which a Malay was made Head of State, while the ruling party's nominee for Headship of the State was appointed Minister of Sarawak Affairs in the federal cabinet.

The expatriate question, mainly falling within the sphere of civil service, had political implications which greatly affected federal state relations. In Malaya it took the form of how quickly the British officers were to be replaced by Malay or local officers. In Sabah while the party consisting principally of non-Muslim natives was in favour of slow replacement and a large percentage of natives taking their places; the mainly Muslim native party and the federal government were in favour of quicker replacement with a higher proportion of Malaysians. The choice of a State Secretary for Sabah became a fiercely contested issue in December 1964, and it nearly led to a complete split in the State Alliance Party. The Sarawak Alliance also split in June 1960, on the expatriate question.

There has been some dispute about the use of Malay in education, particularly in Sarawak. The federal government wanted education in Malay to be pushed more vigorously, in spite of the fact that there existed no facilities for it. In August 1965, the Minister of Education announced that free primary education would be provided in all government and government aided schools in Sarawak (and Sabah) from 1 January 1966. The federal government did not want to impose its plans on any state governments to consider bringing closer together the federal and state system. During the crisis which occurred in the Sarawak Alliance in June-July 1966, some fears were expressed that Malay might be made the only official language even before 1973, although such a possibility was denied by the Prime Minister.

After the separation of Singapore in 1965, the United Pasok-momogun Kadazan Organisation (UPKO) in Sabah

raised the question of whether the relations between Sabah and the federal government should not be re-examined to take account of Singapore's departure. The federal government reacted strongly against this suggestion, as it might lead to secession. Later, the federal Deputy Prime Minister, while on a tour of Sabah, agreed that "the administrative machinery by which the two governments could liaise together should be improved", although he did not agree that the terms on which Sabah had entered Malaysia should be re-examined. In Sarawak the United People's Party, an opposition party, called for a referendum on whether or not Sarawak should remain in Malaysia.

Party system has also influenced the course of federal-state relations. An instance of informal coordination via the party machinery was that after both the 1959 and 1964 elections in Malaya the person appointed as head of the executive (the *Mentri-Besar* or Chief Minister) had to be approved by the (Alliance) Federation Prime Minister. Even the political secretaries to the Chief Minister were similarly approved. Another party device for promoting cooperation was the holding of a meeting of the federal cabinet with the Chief Ministers of the states controlled by the Alliance. The importance of party in ensuring cooperation between the states and the federal government was stressed by the Alliance Chief Minister of Penang in 1964 election, who warned the electors that there was no point in their voting for the Socialist Front, because even if the Front won a majority in the state, the Alliance was bound to be in control of the federal government, so the federal grants could be reduced. The cabinet changes in Sabah (December 1964) and Sarawak (June 1966) were regarded as examples of the federal government's power, exercised through the party system.¹

1. R. S. Milne, *op. cit.*, pp. 79-86.

The Federal Executive

I. The Supreme Head Of State

Election etc. There is a Supreme Head of the Federation, who is called the Yang di-Pertuan Agong ("He who is made Lord"). He takes precedence over all persons in the Federation and is not liable to any proceedings whatsoever in any court. His consort takes precedence next after the Yang over all other persons in the Federation. The Supreme Head is elected by the Conference of Rulers for a term of five years. 'The king (Supreme Head) is remarkable in being an elected monarch, although it is a very restricted kind of election. The electors are the nine Rulers of the States and their choice is limited to one of their own number.'

The voting takes the form of each Ruler declaring whether the Ruler who is being voted is suitable or unsuitable to be King. A resolution that a Ruler is unsuitable is carried only if at least five members of the Conference have voted for it. Presumably if, say, two Rulers were to abstain, a Ruler could be elected King if the vote were four against him and three for

him. In 1957, at the time of first election, the Ruler who was first in order of precedence, the 84-year old Sultan of Johore withdrew his name. The next in order, the Sultan of Pahang, was voted unsuitable, so the third in precedence, the Ruler of Negri Sembilan was elected by eight votes to one.¹ The Supreme Head may resign his office by writing under his hand addressed to the Conference of Rulers or he may be removed from office by the Conference of Rulers.

Deputy Supreme Head. There is also provision for a Deputy Supreme Head (known as the Timbalan Yang di-Pertuan Agong). He exercises the functions and has privileges of the Supreme Head during any vacancy in the office of the Head and also during any period when the Supreme Head is unable to exercise the functions of his office owing to illness, absence from the Federation or for any other cause. But the Deputy Supreme Head cannot exercise those functions during any absence of the Supreme Head, which is expected to be less than 15 days. The Deputy Supreme Head is also elected by the Conference of Rulers for a term of 5 years, or if elected during the term for which the Supreme Head was elected, for the remainder of that term. He may resign his office by writing under his hand addressed to the Conference of Rulers and he ceases to hold office on ceasing to be a Ruler. If during the term for which the Deputy Supreme Head was elected a vacancy occurs in the office of the Supreme Head his term expires on the cessation of the vacancy. Parliament may by law provide for the exercise by a Ruler of the functions of the Supreme Head where those functions cannot be so exercised by the Deputy Supreme Head owing to a vacancy in his office, or to his illness, absence from the Federation or to any other cause. But such a law cannot be passed without the consent of the Conference of Rulers.

Conditions of Office. The Supreme Head cannot exercise his functions as Ruler of his State except those of head of the

1. A parallel to the election is found in the choice of the Ruler of Negri Sembilan by the Undangs or territorial Chiefs—R.S. Milne, *Government and Politics in Malaysia*, pp. 132-33.

Muslim Religion.¹ He cannot hold any (other) office of profit and he cannot engage in any commercial enterprise. He is also debarred from receiving any emoluments of any kind whatever payable to or accruing to him as the Ruler of his State. The Supreme Head cannot, without the consent of the Conference of Rulers, be absent from the Federation for more than 15 days, except on a State visit to another country. Where the Deputy Supreme Head or any other person authorised by law exercises the functions of the Supreme Head for a period exceeding 15 days, the foregoing conditions apply to him. Parliament by law provides a Civil List of the Supreme Head, which includes provision for an annuity to be paid to him and this is charged on the Consolidated Fund and cannot be diminished during his continuance in office. Parliament by law also makes provision for the remuneration of the Deputy Supreme Head or any other person authorised by law to exercise the functions of the Supreme Head.²

Powers and Functions. The Supreme Head appoints a Juma'ah Mentri (Cabinet of Ministers) to advise him in the exercise of his functions. The Cabinet is appointed as follows : (a) He first appoints as Perdana Mentri (Prime Minister) to preside over the Cabinet a member of the House of Representatives who in his judgment is likely to command the confidence of majority of the members of that House ; and (b) on the advice of the Prime Minister he appoints other Mentri (ministers) from among the members of either House of Parliament ; but if an appointment is made while Parliament is dissolved a person who was a member of the last House of Representatives may be appointed. But he can not continue to hold office after the beginning of the next session of Parliament unless, if he has been appointed Prime Minister, he is a member of the new House of Representatives, and in any other case he is a member either of that House or of the Senate.

1. Article 34 (8).

2. Article 32-5.

The Supreme Head is entitled, at his request, to any information concerning the government of the Federation which is available to the Cabinet.

He may act in his discretion in the performance of the following functions: (a) the appointment of a Prime Minister, (b) the withholding of consent to a request for the dissolution of Parliament, (c) the requisition of a meeting of the Conference of Rulers concerned solely with the privileges, position, honours and dignities of the Rulers and any action at such a meeting and in any other case mentioned in this Constitution. Federal law may make provision for requiring the Supreme Head to act after consultation with or on the recommendation of any person or body of persons other than the Cabinet in the exercise of any of his functions other than: (a) functions exercisable in his discretion; and (b) functions with respect to the exercise of which provision is made in any other article. The Supreme Head is the Supreme Commander of the armed forces of the Federation. He also has power to grant pardons, reprieves and respites in respect of all offences which have been tried by court-martial; and the Ruler or Governor of a State has power to grant pardons, reprieves and respites in respect of all other offences committed in his State.¹

II. The Conference of Rulers

There is a Majlis-Raja-Raja (Conference of Rulers) which is constituted in accordance with the Fifth Schedule. It is actually a modified form of the earlier Durbar of Rulers, "later called" Council of Rulers, from 1948 to 1957. Unlike the former two bodies, the Conference includes not only the hereditary Rulers of the 9 states, but also the Governors of Penang, Malacca, and (since 1963) Sabah and Sarawak. The Conference of Rulers exercises its functions of: (a) electing, in accordance with the provisions of the Third schedule, the Yang di-Pertuan Agong and Deputy Supreme

1. Article 42-43.

Head of the Federation ; (b) agreeing or disagreeing to the extension of any religious acts, observances or ceremonies to the Federation as a whole ; (c) consenting or withholding consent to any law and making or giving advice on any appointment which under this Constitution requires the consent of the Conference or is to be made by or after consultation with the Conference, and may deliberate on questions of national policy (for example changes in immigration policy) and any other matter that it thinks fit.

When the Conference deliberates on matters of national policy the Yang di-Pertuan Agong is accompanied by the Prime Minister, and the other Rulers and the Governors by their Mentri Besar or Chief Ministers ; and the deliberations can be, among the functions exercised, by the Yang di-Pertuan Agong in accordance with the advice of the Cabinet, and by the other Rulers and the Governors in accordance with the advice of their Executive Councils. No law directly affecting the privileges, position, honours or dignities of the Rulers can be passed without the consent of the Conference of Rulers. The Conference of Rulers has to be consulted before any change in policy affecting administrative action under article 153 is made. The members of the Conference of Rulers may act in their discretion in any proceedings relating to the following functions, that is to say : (a) the election or removal from office of the Yang di-Pertuan Agong ; or the election of the Deputy Supreme Head of the Federation ; (b) the advising on any appointment ; (c) the giving or withholding of consent to any law altering the boundaries of a State or affecting the privileges, honours or dignities of the Rulers ; or (d) the agreeing or disagreeing to the extension of any religious acts, observances or ceremonies to the Federation as a whole. The function of the Conference of Rulers of agreeing or disagreeing to the extension of any religious acts, observances or ceremonies to the Federation as a whole does not extend to Sabah or Sarwak.¹

1. Article 38.

62-66 3895

On some subjects on which the Conference deliberates, the Rulers are obliged to take the advice of persons who are responsible to the people through democratic processes. Thus, when the Conference considers "matters of national policy" the Supreme Head is accompanied by the Prime Minister and other members by their respective *Mentri Besar* or Chief Minister. The Constitution specifically provides that the Conference should be consulted before any policy is made affecting administrative action under article 153, which deals with the special position of the Malays (Article 38 (5)). Many of its meetings seem to be of a routine nature; and a good deal of attention has so far been given to religious matters, such as conditions for divorce and polygamy for Muslims, conduct of religious classes for adults, the banning of a religious publication, etc. A Religious Standing Committee of the Conference makes recommendations in regard to some of these matters. The Conference has also been useful as a place in which the federal government can brief the Rulers, and their Ministers, on important political developments, such as the formation of Malaysia and "Confrontation" by Indonesia.¹

III. The Cabinet

Formation and Composition. The executive authority of the Federation is vested in the Yang di-Pertuan and is exercisable subject to the provisions of any federal law and of the Second Schedule, by him or by the Cabinet or any Minister authorised by the Cabinet. But Parliament may by law confer executive functions on other persons. In the exercise of his functions under this Constitution or federal law the Yang di-Pertuan Agong is obliged to act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet, except as otherwise provided by the the Constitution.

As already pointed out in section 1, the Prime Minister is appointed by the Supreme Head; and other ministers

1. R. S. Milne, *op. cit.*, pp. 146-47.

are also appointed by the Supreme Head, but on the advice of the Prime Minister, who should command the confidence of the majority in the popular House of Parliament. The Cabinet is collectively responsible to Parliament. If the Prime Minister ceases to command the confidence of the majority of members of the House of Representative, then, unless at his request the Supreme Head dissolves Parliament, the Prime Minister has to tender the resignation of the Cabinet. Subject to this provision, Ministers other than the Prime Minister hold office during the pleasure of the Supreme Head unless the appointment of any Minister has been revoked by him on the advice of the Prime Minister, but any minister may resign his office. Before a Minister exercises the functions of his office he has to take and subscribe in the presence of the Supreme Head, the prescribed oath of office.

The Prime Minister has considerable discretion in choosing the ministers. In doing so, he has to keep in mind: (a) the claims of those members of the ruling party who are known to possess political or administrative capacity; (b) those prominent leaders of the party who hold powerful position; and (c) that a fair number of Chinese and Indians are included in the Cabinet. The Cabinet also includes separate ministers for Sarawak Affairs and Sabah Affairs, each being a representative of the territory concerned. The practice is becoming established (a) that the Minister of Finance and the Minister of Commerce and Industry should be Chinese; and (b) the Ministers of Rural Development, Education, Agriculture and Internal Security are usually Malay.

The total number of members in the Cabinet is not too large. Some ministers hold charge of more than one ministry; while occasionally ministers without portfolio are also appointed. For example, in August 1974, the Prime Minister (Tun Abdul Razak) said that he would form an "action-oriented" cabinet to provide effective administration and launch development projects. The reorganised Cabinet on 3 September was composed of (a) the Prime Minister, holding the portfolio of

Foreign Minister, (b) Deputy Prime Minister, holding the portfolios of Finance and Coordinator of Public Corporations; and (c) Ministers with the following portfolios: Defence, Labour and Manpower, Communications, Trade and Industry, Home Affairs, Health, Culture and Sports, Primary Industries, Education, Agriculture and Rural Development, Lands and Mines, Local Government and Environment, Transport and Works, Law and Attorney General, Welfare Services, General Planning and Socio-Economic Research, Information and Special Functions, Power and Technology (including Research), and Housing and New Villages—total number 19.

The Prime Minister, Dr. Mahathir Mohammad, after the elections, on 29 April 1982 formed the new Cabinet in the following way. The strength of the Cabinet was retained at 24, including the post of Minister for Science, Technology and Environment. He held the Defence Portfolio, while the Deputy Prime Minister was given Home Affairs. He retained his senior colleagues in their old portfolios and brought in three new-comers at Cabinet level. The former Chief Minister of Malacca was appointed the new Information Minister and the former Chief Minister of Negri Sembilan was appointed Minister of Land Regional Development. A former deputy minister and new deputy ministers were also appointed.

A minister without portfolio may be entrusted with the management of party affairs. The practice of having a Deputy Prime Minister has also grown. The number of ministries may be increased or diminished; and functions may also be transferred from one ministry to another. These changes are made either with the object of improving the performance of the ministry as a whole or for meeting political needs.

In addition to members of the Cabinet, assistant ministers from among members of Parliament are appointed. They assist Cabinet ministers in the exercise of their powers and the performance of their duties. The Constitution Amendment Act, 1964 also made provision for the appointment of parliamentary secretaries and political secretaries. The former are drawn from members of either House of Parliament; their functions

are not laid down in detail, but they differ from assistant ministers in being lower in rank and having only parliamentary and administrative duties. The political secretaries are not members of Parliament; in practice they seem to perform public relations duties. They have been found to be essential in the maintenance of close contact with the public; and they help effectively in the work of putting across to the public the intentions behind any move by the government. We may say that like the United Kingdom and India, in Malaysia, too, a distinction can be made between the Cabinet and the Ministry—the larger body including the Assistant Ministers and Parliamentary Secretaries.

Working of the Cabinet. The Cabinet usually meets once a week and its meetings are presided over by the Prime Minister, but in his absence by the Deputy Prime Minister. There is a Permanent Secretary to the Prime Minister's Department. He is head of the Cabinet Secretariat; and his functions include: summoning meetings of the Cabinet, preparing the agenda, keeping minutes, and transmitting Cabinet decisions to government departments and other agencies which have to implement them. The minutes are kept secret, so the information available about Cabinet meetings is scanty. The Cabinet makes use of committees, for closer consideration of problems, before they are taken up for discussion in the Cabinet. In 1959 there were committees for Establishment, Defence, Internal Security, Economics, Social Services, Intelligence and Counter-Subversion.

Prime Minister's Place. His place is that of primacy; he holds a dominating position. The Supreme Head appoints the Ministers, Assistant Ministers and Parliamentary Secretaries on the advice of the Prime Minister. His resignation means the resignation of the entire ministry. He can reshuffle the Cabinet and ask any minister or ministers to resign. He advises the Supreme Head to dissolve the lower House of Parliament. He assigns portfolios to the ministers and can at any time transfer portfolios from one minister to another

He presides over the meetings of the Cabinet and he is the channel of communication between the Cabinet and the Supreme Head. He is a prominent leader of the ruling party organisation and the undisputed head of the parliamentary party. He is also the chief spokesman of the Government inside as well as outside the Parliament. Thus we may say that he is *primus inter pares* or the corner-stone of the Cabinet arch as in UK and India. The Prime Minister, according to the Constitution, must be a citizen by operation of law, not by registration or naturalization. He must be a member of the House of Representatives; in UK and India such a convention has been established, though there is no such constitutional requirement in these countries.

Ministerial Responsibility. The Cabinet is collectively responsible to Parliament, but in actual practice the responsibility is to the popular House—the House of Representatives. All members of the Cabinet must support the decisions taken by the Cabinet even though some might have opposed them in the meeting of the Cabinet. If any minister does not accept the decision, the only honourable course for him is to resign. For this reason, it is said that they swim and sink together. But each minister is individually responsible for the working of his ministry—the departments under his charge. He has to defend the policy and programme of the ministry inside Parliament as well as in public. Moreover, he has to answer criticism of the ministry and justify the activities undertaken by the ministry.

Questions are asked in the Parliament; ministers who do not answer questions satisfactorily face possible censure from Parliament and may even be forced to resign. In this way Parliament is able to 'hold' the ministers responsible and accountable to Parliament. Members of Parliament may also put up a motion for asking an adjournment of the House for the purpose of discussing a definite matter of urgent public importance. Criticism can also be made against particular ministries during the debate on the Budget. During

meetings of the Public Accounts Committee, members have the opportunity to ascertain whether any department has spent more money on objects other than those for which Parliament granted it.

But in practice it is extremely difficult for Parliament to enforce ministerial responsibility. The main reason for this is the emphasis that has been given to party solidarity and party discipline. However, the role of the opposition in bringing up matters concerning mal-administration in government departments is well recognised in Britain. But political realities in Malaysia dictate a kind of democracy and a style of politics that is very different from the British experience. Although the democratic process has been accepted, it has been accepted only with some modifications. In fact it is generally believed that the concepts and precepts of a Westminster-type democracy are irrelevant to Malaysia's needs and thus 'to mimic the democracy of Westminster in 1957 without the comparative economic and social foundation is to court self-destruction. In particular there appears to be a consensus in the community for a strong government to maintain political stability and to bring about national unity through correcting the economic imbalance among the various races in the country.... Thus democratic values appear to be less important than other values such as political stability and socio-economic development'. (M. Puthucherry)¹

IV. Special Powers Against Subversion and Emergency Powers.

The above powers are contained in three articles 149, 150 and 151, which are included in Part XI of the Constitution. Article 149 says: If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons (a) to cause a substantial number of citizens to fear organised violence against persons or

1. Suffian et al. *op cit*, pp. 123-25.

property ; or (b) to excite disaffection against the Supreme Head or any Government in the Federation ; or (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence ; or (d) which is prejudicial to the security of the Federation or any part thereof, any provision of that law designed to stop or prevent that action is vital notwithstanding that it is inconsistent with any of the provisions of articles 5, 9 or 10 or would apart from this article be outside the legislative power of Parliament ; article 79 would not apply to a Bill for such an Act or any amendment to such a Bill. A law containing such a recital, if not sooner repealed, ceases to have effect if resolutions are passed by both Houses of Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this article.

Article 150 enables the Government to exercise a wide range of extraordinary executive and legislative powers. The main features of the provisions are : (1) A proclamation of emergency is an essential pre-requisite before the special powers under the provisions can be exercised. The formal proclamation is issued by the Supreme Head, but he acts on the advice of the Cabinet, so it is the Government which proclaims the emergency. (2) When such a proclamation is in effect, emergency legislation becomes valid, even if inconsistent with any provision of the Constitution. (3) The executive is permitted to legislate through emergency ordinances when Parliament is not sitting and pending the sitting of both Houses of Parliament. (4) The Federal executive's authority extends to State matters and it is empowered to give directions to State Governments or officers and authorities thereof. (5) It would appear that while a proclamation is in effect, Parliament can legislate on any matter whether outside or within the Federal List.

Article 151 purports to apply 'Where any law or ordinance made or promulgated in pursuance of this Part provides.

for preventive detention', but does not state that preventive detention outside Part XI is prohibited. Moreover, item 3 (c) of the Federal List seems to suggest there is a general power to legislate on 'internal security', including preventive detention, restriction of residence. It could be argued that preventive detention is inherently inconsistent with article 5 and therefore can only be saved by article 149 or article 150 but this is a slender argument because preventive detention can be consistent with some of the rights in article 5 (S. Jayakumar).¹

The powers to legislate against subversion in article 149 and to legislate during a proclamation of emergency in article 150 are similar in substance, the significant difference is procedural. Article 149 expands the power of Parliament, but not that of the executive: whereas article 150 invests the Supreme Head with the authority to proclaim the emergency and with legislative power to act under the proclamation unless and until Parliament is sitting. 'The significant substantive difference between articles 149 and 150 is that the latter specifically exempts from the reach of emergency legislation matters of Muslim law or custom of the Malays, matters of native law or custom in a Borneo State, and matters relating to religion, citizenship, and language. Article 149 does not so limit legislation against subversion.

'Since both articles 149 and 150 can, when invoked, effectively suspend all fundamental liberties, with the exception of those noted in article 150, it follows that the protections of article 151, all of which are procedural, become of utmost importance to the citizen adversely affected by being caught within the sweep of one of those articles. The most cursory reading of articles 149 and 150 reveals that the Constitution meant to invest Parliament with the broadest substantive power to meet the threat of subversion and other emergencies;

1. Suffian et al, *op cit.*, pp. 332-33 and 349.

and the courts have interpreted those provisions favouring the power exercised.' (R.H. Hickling.)¹

Emergency in 1969. Malaysia was engulfed in the worst racial rioting by the communal holocaust of 13 May 1969. Tun Dr. Ismail, who had just been brought into the new cabinet as the Minister of Home Affairs at the insistence of UMNO extremists even remarked: "Democracy is dead in this country". The communal holocaust tremendously boosted the position of the extremists and brought them the backing of a large part of the ranks and file of the UMNO. Under their pressure the Government over-reacted to the crisis. On 14 May, the Supreme Head of State issued a proclamation of emergency and on the following day a National Operations Council (NOC) was set up with Tun Razak as the Director of Operations. Tun Abdul Razak, the Prime Minister, was relegated to the position of a figure-head and his cabinet was merely to advise the NOC. The Council began taking drastic action. Parliamentary government was suspended and elections in East Malaysia were postponed for an indefinite period. Political meetings and all political party publications were banned and strict censorship was imposed. All this was done primarily to ensure that the NOC could effect the necessary fundamental changes in the constitutional-political framework, and lay the foundation of Malay rule without having to worry about the response of the people.²

The Government decided to 'entrench' certain provisions of the Constitution and remove them from future political debate. These related to the prerogatives of the Malay Rulers, the official status of the Malay language, the responsibility of the Supreme Head to safeguard the special position of the Malays and their privileges in land, civil service, scholarships and licenses. Departing from its earlier practice of avoiding public discussions on communal issues, the government set up a new agency—a Department of National Unity—to devise public policies and programmes for improving inter-communal

1. *Ibid.*, p 35

2. RK Vasil, *Ethnic Politics in Malaysia*, pp 183-88

relations. It also activated a National Consultative Council made up of 66 representatives of political, legal, economic and other organisations to search for improved patterns of inter-communal accommodation.

V. The Constitutional Position of Yang di-Pertuan Agong (Supreme Head) :

Although the Yang di-Pertuan Agong is a constitutional monarch, bound by the Constitution to act at all times on the advice of the Cabinet, yet he cannot be removed by the Cabinet or even by the Malaysian Parliament itself. In this respect, his position is stronger than that of the President of India, who can be impeached, but not as strong as that of the English Monarch, who cannot be removed at all, while the Yang di-Pertuan Agong may be removed from office by the Conference of Rulers. This may be effected at any time and for any reason and the decision cannot be questioned, because the Constitution provides that the members of the Conference of Rulers may act in their discretion in effecting the removal from office of the Yang di-Pertuan Agong. All that is required is that a resolution of the Conference of Rulers to remove the Yang di-Pertuan Agong must have the support of at least five of the nine Rulers. Article 32 (1) states that Yang di-Pertuan Agong 'shall not be liable to any proceedings whatsoever in any court'. Disabilities attached to his office are found in article 34. During any period that a Ruler holds the office of the Yang di-Pertuan Agong, he is not permitted to exercise his functions as Ruler of the State except those of Head of the Islamic religion. He is allowed, however, to exercise as Ruler of his State any power vested in him to amend the Constitution of his State.

As a constitutional monarch in exercising his functions under the Constitution or federal law, he must act with the advice of the Cabinet or of a minister under the general authority of the Cabinet. There are some functions which he exercises in his discretion, three of these are specifically

mentioned in article 40 (2). There are other functions which he exercises after *consultation* with or *on the recommendation* of some person or body of persons other than the Cabinet, but for the exercise of a vast majority of functions the Yang di-Pertuan Agong must act as a constitutional monarch and seek the advice of his Cabinet. He appoints the Cabinet, which advises him in the exercise of his functions and he is entitled to receive any information concerning the government which is available to the Cabinet. When the Conference of Rulers deliberates on matters of national policy he must be accompanied by the Prime Minister and the deliberations are among the functions exercised by the Yang di-Pertuan Agong in accordance with the advice of the Cabinet.

In Relation to Parliament. Although the Yang di-Pertuan Agong is one of the constituent parts of Parliament, there are certain functions which he performs in relation to Parliament as a whole and in relation to the Houses separately. He can summon, prorogue, or dissolve Parliament. He may address either House or both Houses jointly. He also appoints 32 Senators, although their choice is not left to his free discretion. Article 45(2) indicates that the Senators shall be persons who in the opinion of the Yang di-Pertuan Agong have rendered distinguished public service or have achieved, distinction in the professions, commerce, industry, etc. He can remove a disqualification for membership of either House, which might have been incurred because of an election offence or because of a conviction for any other offence. He also appoints the clerk to the Senate as well as the clerk to the House of Representatives.

In Relation to the Judiciary. Acting on the advice of the Prime Minister and after consulting the Conference of Rulers, the Yang di-Pertuan Agong appoints: (i) Lord President of the Federal Court, (ii) Chief Justices of the High Courts, and (iii) other judges of these courts. Acting on the advice of the Lord President, he may also appoint for such purposes and for such period of time as he may specify any person who has held high judicial office in

Malaysia to be an additional judge of the Federal Court. By a recent amendment in 1976 for the dispatch of business of the High Court in Malaya, acting on the advice of the Lord President, he may by order appoint to be judicial commissioner for such period or such purposes as may be specified in the order any person qualified for appointment as a judge of a High Court. The person so appointed is given power to perform such functions of a judge of the High Court in Malaya as appear to him to require to be performed. When a judge of one High Court is being transferred to another High Court, the Yang di-Pertuan Agong can make the transfer on the recommendation of the Lord President, after consulting the Chief Justices of the two High Courts. He can also extend the tenure of office of a judge of the Federal Court beyond the age of 65 years, but for not more than 6 months beyond that age. He is entitled to refer to the Federal Court for its opinion any question as to the effect of any provision of the Constitution and the Federal Court must pronounce in open court its opinion on any question so referred to it. Finally, he is authorised to determine at what place in the Borneo States the High Court will have its principal registry, and he also has the authority to appoint a judicial commissioner for the dispatch of business of the High Court in Borneo.

In Relation to the Special Position of the Malays. Article 153 (1) of the Constitution states that it is the responsibility of the Yang di-Pertuan Agong to safe-guard the special position of the Malays and the legitimate interests of other communities in accordance with the provisions of the said article. He is also required to ensure that a reasonable proportion of any permits or licenses which may be required by federal law for the operation of any trade or business is issued to Malays.

One commentator described the office of the Yang di-

Pertuan Agong as "the essential one of the Malaysian constitution, without which all others become meaningless;" and another has said: "the position of the Yang di-Pertuan Agong has emerged as one of the strong cohesive forces in the federal structure." His functions in relation to the religion of Islam and the special position of the Malays have increased but only as a constitutional ruler acting on advice (F.A. Trindade).¹

¹ Suffian et al, *op cit*, pp 106-23.

Federal Parliament

I. Composition

Introduction. From 1955 to 1959 the Council had an elected majority, 52 out of its 98 members having been elected at the general election of 1955. Even after the attainment of independence in 1957, the system was not changed. Between 1957 and 1959, it had about 50 per cent of non-elected members. In 1959 the legislature assumed its present form with two chambers named, respectively, the House of Representatives and the Senate. Now the Parliament consists of the Yang di-Pertuan Agong, the Dewan Negara (Senate) and the Dewan Ra'ayat (House of Representatives). The three institutions acting together enact laws. Although a constituent part of Parliament the Yang di-Pertuan Agong does not sit in Parliament. He may prorogue or dissolve Parliament, i.e. the House of Representatives unless sooner dissolved, Parliament continues for five years from the date of its first meeting, and at the end of the five years period it is automatically dissolved. Whenever Parliament is dissolved, a general election has to be held within 60 days in the States of Malaya and 90 days in Sabah and Sarawak.

The Dewan Negara (The Senate). It is a reasonably small body of 58 members, 26 of whom are chosen by indirect election from the States, and the other 32 are appointed by the Yang di-Pertuan Agong on the advice of the Cabinet. According to the Constitution, the appointed members should be persons who have rendered distinguished public service or have achieved distinction in the professions, commerce, agriculture, cultural activities, or social service, or are representative of racial minorities, or are capable of representing the interests of *orang asli*. The Federal Capital Territory is not represented, because it does not have a legislature of its own and it is the direct responsibility of the Federal Government and not of the States.

'By not having direct elections to the Senate and by keeping the power of appointment in the hands of the Cabinet, the party in power by appointing only supporters of the Government can ensure that bills introduced by the Government will have a smooth passage in the Senate. It is some sort of patronage system.... If we were to have a referendum today on the question of whether Senators should be elected or appointed, 99.9 per cent of the electorate would vote for an election, because they want to see democracy at work. But since politicians decide for the masses on many important political issues, the masses virtually have no say at all. They have to follow what the politicians have said and what they have to say.'— (Nik Abdul Bashid.)¹ The normal term of office for senators is 6 years.

The Dewan Ra'ayat (The House of Representatives). It is a democratic chamber elected by the people directly on the basis of adult suffrage. Its size is based on population. With a population of 6.6 million in 1969, the first Parliament of 1959 had 104 members, one member representing about 64,000 people.

1. Suffian *et al*, *The Constitution of Malaysia : Its Development* 1957-77, pp. 139-40.

In the Second Parliament of 1964, the number of members was increased to 159, as a result of the formation of Malaysia, whereby Sabah, Sarawak and Singapore were represented in the Parliament. In the 1969 election, the number was reduced to 144 after the separation of Singapore from Malaysia. It was again increased to 154 in the Fourth Parliament following the 1974 general election. State-wise distribution of seats is given below :

<i>State</i>	<i>No. of Seats</i>	<i>State</i>	<i>No. of Seats</i>
Johore	16	Penang	9
Kedah	13	Sabah	16
Kelantan	12	Sarawak	24
Negri Sembilan	6	Trengganu	7
Pahang	8	Federal Territory	5
Perlis	2		
		Total	154

Some constituencies have as few as 13,345 voters, while others have as many as 58,261 voters. Originally, it was intended that there should be a rural bias in the proportion of 1:2 in favour of rural constituencies. But for political and other reasons, Parliament in 1974 adopted a new scheme, according to which constituencies were to be determined by the House itself on the recommendation of the Election Commission. As a result, some states were allocated fewer and some more seats than the previous Parliament. However, in spite of the redistribution of seats in the 1974 elections, the numbers of seats are not proportionate to the relative populations of the country; they resulted from hard political bargaining preceding the formation of the Federation and taking into account, *inter alia* the large land area of the Borneo States. Further, the population of a State is not the sole factor in determining the

number of seats for each state, because other factors must be taken into account, such as the number of voters on the electoral roll, the age distribution of the population, citizenship factors, communication problems in rural constituencies, the rate of development in the State, mobility of the rural population to urban areas....'

Qualifications for Membership and Disqualifications. The Constitution provides a minimum age of 30 years for membership of the Upper House and 21 years for membership of the Lower House. Other qualifications are the same for both Houses, namely citizenship of the Federation, residence in Malaysia and absence of any disqualification. Disqualifications are the same for membership in both Houses and are laid down in article 48. Subject to this article, a person is disqualified for being a member of either House (Majlis) of Parliament if: a) he is and has been found or declared to be of unsound mind; or (b) he is an undischarged bankrupt; or (c) he holds office of profit; or having been nominated for election to either House of Parliament or to the Legislative Assembly of a State, or having acted as election agent to a person so nominated, he has failed to lodge any return of election expenses required by law within the time and in the manner so required; or (d) he has been convicted of an offence by a court of law in the federation and sentenced to imprisonment for a term of not less than one year or to a fine not less than two thousand dollars and has not received a free pardon; or (e) he has voluntarily acquired citizenship of, or exercised rights of citizenship in a foreign country or has made a declaration of allegiance to a foreign country. Federal law may impose, for such periods as may be specified thereby, disqualification for membership of either House of Parliament on persons committing offences in connection with elections; and any person who has been convicted of such an offence or has in proceedings relating to an election been proved guilty of an act constituting such an offence, shall be disqualified accordingly for the period so specified.

A person cannot at the same time be a member of both Houses of Parliament, nor be elected to the House of Representatives for more than one constituency or to the Senate for more than one State, nor be both an elected and an appointed member of the Senate. If a member of either House of Parliament becomes disqualified for membership of that House his seat become vacant. If a person disqualified for being a member of the House of Representatives is elected to that House or if a person disqualified for being a member of the Senate is elected or appointed to the Senate, or if an election or appointment to either House is contrary to article 49, the election or appointment is void.¹ But in the absence of residential qualification either in the Constitution or in the election rules, concurrent membership in either House of Parliament and a State Legislative Assembly is not forbidden and is, in fact, common. In 1978, the Chief Ministers of three States, besides being members of their State Legislative Assemblies, were concurrently members of the federal Parliament.

Although residential qualification in the constituency is not governed by the Constitution, custom and usage play a great part in the election. With the exception of the 1959 and 1964 general elections, the elections of 1969 and 1974 saw a dividing line between 'locals' and outsiders. The two later elections rejected 'outsiders' in the presence of the locals or natives of that State. Since the sessions of the Federal Parliament and of the State Legislative Assemblies, especially the budget session, are held almost simultaneously, and the House of Representatives normally has a long session of about forty days towards the end of the year, as a result of dual membership, absence in one legislature or another is bound to occur. Further, in a democratic country, membership of the State Legislative Assemblies should be spread over as many aspiring members of a political party as possible. A member of any House may resign his seat. The Constitution also provides that if a member of either House is absent without leave of the

1. Articles 49-50.

House from every sitting of that House for a period of six months, the House may declare his seat vacant.

II. Organisation of Parliament

Sessions, etc. The Yang di-Partuan Agong (Supreme Head of State) from time to time summons Parliament and is required not to allow 6 months to elapse between the last sitting in one session and the date appointed for its first meeting in the next session. Parliament generally meets for about a week at a time, except for a longer meeting to consider the budget, and then adjourns. The Parliament sits for about 50-60 days in a year. The Yang di-Pertuan Agong may prorogue or dissolve Parliament; and Parliament (the House of Representatives) unless sooner dissolved continues for 5 years from the date of its first meeting and then stands dissolved. Whenever Parliament is dissolved a general election is held within 60 days from the date of the dissolution and Parliament is summoned to meet on a date not later than 90 days from that date.

Presiding Officers. The Senate from time to time chooses one of its members to be Yang di-Partuan Dewan Negar (President of the Senate) and one to be deputy president of the Senate. It can transact no business while the office of President is vacant other than the election of a President. A member holding office as President or Deputy President ceases to hold his office on the expiry of the term for which he was elected or appointed a member or on otherwise ceasing to be a member of the Senate and may at any time resign his office. During any absence of the President from any sitting the Deputy President or, if he also is absent, such other member as may be determined by the rules of procedure of the Senate, acts as President. If a member of the Legislative Assembly of a State is chosen to be President he has to resign from the Assembly before exercising the functions of his office.

The House of Representatives also from time to time chooses one of its members to be Yang di-Pertuan Dewan Ra'ayat

(Speaker) and one to be Deputy Speaker. It can transact no business while the office of Speaker is vacant other than the election of a Speaker. A member holding office as Speaker or Deputy Speaker vacates his office on ceasing to be a member of the House and may at any time resign his office.¹ During any absence of the Speaker from a sitting of the House, of Representatives the Deputy Speaker, or, if he also is absent, such other member as may be determined by the rules of procedure of the House, acts as Speaker. If a member of the Legislative Assembly of a State is chosen to be Speaker he has to resign from the Assembly before exercising the functions of his office. Parliament by law provides for the remuneration of the President and Deputy President of the Senate and the Speaker and Deputy of the House of Representatives, and the remuneration so provided for the President of the Senate and the Speaker of the House of Representatives is charged on the Consolidated Fund.²

Participation in Meetings. Every member of either House of Parliament before taking his seat takes and subscribes before the person presiding in the House an oath in the form set out in the 6th schedule, but a member may

1. Formerly the Speaker used to be a member of the House, but as a result of amendment of the Constitution in 1964 even a non elected member may be chosen as Speaker. The first such Speaker was chosen in November 1964. In presiding, the speaker applies the Standing Orders of the House, drawn up by the Committee on Standing Orders and approved by the House. But the Speaker has some "residuary powers" over matters not covered by the Standing Orders. His decisions are final, as there is no appeal against them. The Speaker and Deputy Speaker are elected by the House: but they are elected with the support of the ruling party. In practice they do not act wholly impartially. —R.S. Milne, *Government and Politics in Malaysia*, p. 116.
2. Articles 55-8.

before taking that oath take part in the election of a President of the Senate or Speaker of the House of Representatives. If a member has not taken his seat within 3 months from the date on which the House first sits after his election or such further time as the House may allow, his seat becomes vacant.

The Yang di-Pertuan Agong may address either House of Parliament or both Houses jointly. In addition to his rights as a member of one of the Houses of Parliament every member of the Cabinet has the right to take part in the proceedings of the other House. Either House of Parliament may appoint as a member of any of its committees the Attorney-General or any member of the Cabinet not a member of that House. But any person, who is not a member of a House, is not authorised to vote in the House or any of its committees. In this context member of the Cabinet includes an Assistant Minister.¹

Regulation of Procedure and Voting. Subject to the provisions of the Constitution and of federal law, each House of Parliament can regulate its own procedure. Each House may act notwithstanding any vacancy in its membership; and the presence or participation of any person not entitled to that does not invalidate any proceedings. Subject to articles 89 (1) and 159 (3) and to sections 10 and 11 of the 13th Schedule, each House if not unanimous takes its decision by a simple majority of members voting; and the person presiding casts his vote whenever necessary to avoid an equality of votes, but can not vote in any other case. In regulating its procedure each House may provide, as respects any decision relating to its proceedings, that it shall not be made except by a specified majority or by a specified number of votes. Members absent from a House are not to vote.

1. Articles 59-61.

Privileges and Remuneration. The validity of any proceedings in either House of Parliament or any committee thereof can not be questioned in any court. No person is liable to any proceedings in any Court in respect of anything said or any vote given by him when taking part in any proceeding of either House of Parliament or any committee thereof. Further, no person is liable to any proceedings in any court in respect of anything published by or under the authority of either House of Parliament. Parliament by law provides for the remuneration of members of each House.¹

Clerks of the Houses. There is a Clerk to the Senate and a clerk to the House of Representatives. The Clerk to the Senate and the Clerk to the House of Representatives are appointed by the Yang di-Pertuan Agong and, subject to the following clause each holds office until he attains the age of 60 years or such other age as Parliament may by law provide, unless he sooner resigns his office. The Clerk to the House of Representatives may be removed from office on the like grounds and in the like manner as a judge of the Federal Court, except in the case of a representation made by the President of the Senate or, as the case may be, the Speaker of the House of Representatives. Except as otherwise expressly provided by this article the qualifications for appointment and conditions of service of the Clerk to the Senate and the Clerk to the House of Representatives, and of members of the Staff of the Houses of Parliament, may be regulated by federal law. The Clerk to the Senate, the Clerk to the House of Representatives, and members of the Staff of Parliament are disqualified for being members of either House of Parliament or the Legislative Assembly of any State.²

Committee System. A bill after introduction is first considered by the whole House, before being referred to a

1. Articles 59-64.

2. Article 65.

committee. But usually there are no select committees in the Parliament of Malaysia. The normal practice is for the House of Representatives to use the Committee of the whole House for the committee stage of bills. After the Second Reading, the House itself (sitting in committee) considers the details and when the bill has been reported out of committee there is a Short Third Reading. One bill was referred to a Select Committee in 1960 and another in 1965. 'It could be argued that the failure to use Select Committees was simply a reflection of the fact that the House was a new institution and Malaysia a small country, and that the legislative process had not yet become sufficiently specialised for Select Committees to be part of the normal legislative procedure. The more cynical would point to the silence of many Government back-benchers in the House and would go on to say that the whole House was, in effect a "Select Committee" in which a limited number of members actually participated, while the rest were merely onlookers.'

Although little use has been made of committees (other than committees of the Whole House) for purposes of legislation there are Select Committees, appointed at the beginning of every session, but they perform other functions. The chief of these are : the Committee of Selection, the Standing Orders Committee, the Public Accounts Committee and the Committee on Privileges. The Speaker is the chairman of the Committee of Selection, which chooses members for other committees. The Public Accounts Committee works closely in conjunction with the Auditor-General; and it is charged with examining the accounts of the Federation and the appropriation of the sums granted by Parliament to meet the public expenditure and also the reports of the Auditor-General on these accounts. Apparent breaches of the privileges of the House or of its members are referred to the Committee on Privileges; and each House can punish for a breach of

privilege.¹

III. Parliament Procedure

This may broadly be divided into Legislative Procedure and Financial Procedure. The same are being described here.

LEGISLATIVE PROCEDURE

The legislative (as well as financial) procedure, as has been prescribed by the Constitution and Standing Orders, is very much similar to that followed in the British and Indian Parliaments. Bills are divided into ordinary bills and money bills; ordinary bills are mostly introduced by the Government, so they are official bills. Besides, there are private members bills (introduced by private members) and there are also private bills, dealing with particular government agency, locality or section of people. A bill (other than a money bill) has to pass through several stages. introduction, first reading (formal), second reading (discussion of details), reference to a Committee (usually Committee of the Whole House), report stage and third reading.

Ordinary Bill. Subject to article 67 (dealing with Money Bills) a Bill may originate in either House. When a Bill has been passed by the House in which it originated it is sent to the other House; and it is presented to the Yang di-Pertuan Agong for his assent when it has been passed by the other House and agreement has been reached between the two Houses or to be so presented under article 68. The Yang di-Pertuan Agong signifies his assent to a Bill by causing the public seal to be fixed thereto, and after assenting to a Bill he causes it to be published as a law. A Bill becomes law on being assented to by the Yang di-Pertuan Agong, but no law can come into force until it has been published, without prejudice, however, to the power of Parliament to postpone the operation

1. R S. Milne, *op. cit.*, p. 119.

of any law or to make laws with retrospective effect. Nothing in this article or in article 68 can invalidate any law confirming an undertaking given by the Federal Government to the effect that a Bill to which the undertaking relates shall not be presented to the Yang di-Pertuan Agong for his assent except in accordance with the undertaking.¹

When a Bill, which is not a Money Bill, is passed by the House of Representatives and, having been sent to the Senate at least one month before the end of the session, is not passed by the Senate or is passed by the Senate with amendments to which the House of Representatives does not agree; and in the following session (whether of the same Parliament or not) but not earlier than one year after it was first passed by the House of Representatives the same Bill, with no other alterations, is passed again by the House of Representatives and sent to the Senate at least one month before the end of the session and is not passed by the Senate or is passed by the Senate with amendments to which the House of Representatives does not agree, the Bill, unless the House of Representatives otherwise directs, is to be presented to the Yang di-Pertuan Agong for his assent with such amendments, if any, as may have been agreed to by both the Houses.

The alterations referred to above are alterations certified by the Speaker of the Representatives to be necessary owing to the time which has elapsed since the bill was passed in the earlier session or to represent amendments made in that session by the Senate. When a Bill is re-presented to the Yang di-Pertuan Agong in pursuance of this article it has to bear a certificate of the Speaker that provisions of this article have been complied with, and that certificate is to be conclusive for all purposes and can not be questioned in any court. This article does not apply to any Bill for making any amendment to the Constitution other than an amendment excepted from the provisions of article 156 (3).²

1. Article 66.

2. Article 68.

Money Bill. A Money Bill is a Bill which contains, in the opinion of the Speaker of the House of Representatives, only provisions dealing with all or any of the following matters mentioned in article 67(1) or the regulation of any tax, and (b) any matter incidental to those matters or any of them (mentioned in article 67) is certified by the Speaker as a Money Bill.

Article 67 lays down as follows: A Bill or amendment making provision (whether directly or indirectly) for (a) imposing or increasing any tax or abolishing or reducing any existing tax; (b) the borrowing of money or the giving of any guarantee by the Federation; (c) the custody of the Consolidated Fund (C F); (d) the payment of moneys into the C F or the payment, issue or withdrawal from the C F; (e) the compounding or remission of any debt; (f) the assignment of a tax or fee on the making of a grant to any State; (g) the receipt of moneys on account of the C F or the audit of accounts of the Federation...and a Bill making any such provision cannot be introduced in the Senate.

When a Money Bill is passed by the House of Representatives and, having been sent to the Senate at least 1 month before the end of the session, is not passed by the Senate without amendment within a month it is to be presented to the Yang di-Pertuan Agong for his assent unless the House of Representatives otherwise directs.¹

FINANCIAL PROCEDURE AND RELATED PROVISIONS

The Consolidated Fund. No tax or rate can be levied by or for the purposes of the Federation except by or under the authority of federal law. All revenues and moneys howsoever raised or received are paid into the Federal C F (similarly there are State C Fs). In addition to any grant or other moneys so charged by any other article or federal law, the following are charged on the CF: (a) all pensions, compensation for loss of office and gratuities for which the Federation is

1. Article 68.

liable; (b) all debt charges, interest and sinking fund charges, the repayment of debt, etc; and (c) any moneys required to satisfy any judgment, decision or award against the Federation by any court or tribunal.

Annual Financial Statement. The Yang di-Pertuan Agong, in respect of a financial year causes to be laid before the House of Representatives a statement of the estimated receipts and expenditure of the Federation for the year and unless Parliament in respect of any year otherwise provides, that statement has to be laid before the commencement of the year. It is also provided that there may be separate statements of receipts and expenditure. The statement of expenditure must show separately : (a) the sums required to meet expenditure charged on the CF; and total sums required to meet the heads of other expenditure proposed to be met from the CF. The statement (of receipts and expenditure) has also to show, so far as practicable, the assets and liabilities of the Federation at the end of the last completed financial year.¹

Supply Bill. The heads of expenditure to be met from the CF but not charged thereon are to be included in a Bill, known as Supply Bill, which provides for the issue from the CF of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

Supplementary Estimates. If in respect of any financial year it is found (a) that the amount appropriated by the Supply Act for any purpose is insufficient, or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Supply Act ; or (b) that any moneys have been expended for any purpose in excess of the amount appropriated for that purpose a supplementary estimate showing the sums required or spent is to be laid before the House of Representatives and the heads of any such expenditure are to be included in a Supply Bill.

Parliament's Further Authority in this Respect. Parliament has power in respect of any financial year : (a) before the passing of the Supply Bill to authorise by law expenditure for part

1 . Articles 96-9.

of the year ; (b) to authorise by law expenditure for the whole or part of the year otherwise than in accordance with the foregoing procedure (articles 99-101), if owing to the magnitude or indefinite character of any service or to circumstances of any unusual urgency it appears to Parliament to be desirable to do so.¹

Auditor-General. There is an Auditor-General (A G); who is appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister and after consultation with the Conference of Rulers. A person who has held the office of A G is eligible for re-appointment but is not eligible for any other appointment in the service of the Federation as well as of any State. The A G may at any time resign his office but cannot be removed from office except on the like grounds and in the like manner as a judge of the Federal Court. Parliament by law provides for remuneration to the A G and the remuneration so provided is charged on the C F. The remuneration and other terms of office of the A G cannot be altered to his disadvantage after his appointment. The terms and conditions of this office are determined, subject to the provisions of federal law, by the Yang di-Pertuan Agong. The A G has to submit his reports to the Yang di-Pertuan Agong, who causes them to be laid before the House of Representatives.²

The National Finance Council (N F C). The Constitution provides for N F C, which consists of the Prime Minister, such other Ministers as the P M may designate and one representative from each of the States appointed by the Ruler or Governor. The N F C is summoned to meet by the P M as often as he considers necessary and whenever the representatives of three or more States demand a meeting, but at least one meeting in a year is compulsory. At any meeting of the N F C the P M may be represented by another Minister of the Federation, or if the P M is not present, the Minister representing him presides over the meeting. It is the duty of the Federal

1. Article 103-04

2. Articles 105-07

Government to consult the NFC in respect of : (a) the making of grants by the Federation to the States ; (b) the assignment to the States of the whole or any portion of the proceeds of any federal tax or fee ; (c) the annual loan requirements of the Federation and the States ; (d) the making of loans to any of the States; (e) the making of development plans; and (f) any other matter in respect of which the Constitution or federal law makes provision for consultation. The Federal Government may also consult the N F C in respect of any other matter, whether or not it involves questions of finance.¹

Federal Grants. The Federation is required to make to each State in respect of each financial year : a) a capitation grant ; and b) a grant for the maintenance of State roads, known as State road grant ; Parliament may by law vary the rates of capitation grant (provisions given in Part I of the Tenth Schedule). Parliament may by law also make grants for specific purposes to any of the States on such terms and conditions as may be provided in such law. The amounts required for making the preceding grants are to be charged on the C F.²

Comments. The provision for an annual financial statement is similar to the one found in the British and Indian Parliaments. The Constitution of Malaysia permits statements for receipts and expenditure to be laid before the House of Representatives. The Supply Bill in Malaysia is akin to the Appropriation Bill in India. But in Malaysia, there is no provision for a separate Finance Bill which includes taxation proposals of the Government as in India. It is implicit as well as apparent that the Supply Act serves the purposes of both the appropriation Act and the Finance Act. The Supply Bill is considered, as in the British Parliament, in the Committee of Supply, which is a committee of the Whole House. Since there is no separate bill for taxation proposals, there is no necessity for a Ways and Means Committee, as the one

1. Article 108,

2. Article 109.

exists in British Parliament. The National Finance Council is a permanent body established by the constitution. It performs many of the functions of the Finance Commissions in India, which are appointed from time to time. A commendable feature of N F C is that it includes representatives of all the States. Moreover, the authority for making grants to the States is vested in the Parliament and not in the Government. The provisions with regard to the establishment of the Consolidated Fund charges on the C F, supplementary Supply Act and the Auditor-General are also on the lines of Britain and India.

IV. Functions of Parliament.

Legislation. The primary function of Parliament is to legislate. As a matter of fact like any other legislature its most important function is legislation. But we have to bear in mind that Malaysian Parliament is the national legislature under a federal Constitution, which makes a division of powers between it and the State Legislatures. With the exception of articles 2, 38, 70, 71, 153 and 181, Parliament has sovereign power to legislate ; but it can legislate only within the limits of its own spheres, namely the Federal and Concurrent Lists, and only in some cases even in the State List. The authority of Parliament to Legislate even in its sphere is not absolute, as it is subject to the judicial review by the federal courts. The division of legislative powers is given in Section III of Chapter 3 under the heading 'Legislative Relationship between the Federation and the States'. The Parliament passes 20-30 bills every year. Most of the bills are official or government bills and a few are private members' bills. Nowhere in the Constitution is it stated that Parliament can delegate its legislative powers to another body, but in exercising its authority, Parliament does often delegate its authority to another body. The Yang is empowered, during an emergency, to promulgate ordinances having the force of law in accordance with article 150.

Control over Finance. Parliament alone has power to levy any taxes or rates, to increase or decrease any existing tax, to make grants to the States, to pass legislation regarding the remuneration to be paid to MPs and high officials. The principle on which parliamentary control of finance is based is the doctrine that Parliament is the custodian of the public purse. This function is very important, as it enables Parliament to exercise a large measure of control over the executive, through discussion during the budget debate. The members of Parliament, particularly those belonging to the opposition, during the budget debate, take the opportunity to discuss not only the financial measures of the Government, but also its policies and its administrative machinery. The budget debate has always been lively, for members take the opportunity to criticise the Government for its failings—acts of omission and commission.

Control over the Executive. This is a very important function of the Parliament, particularly of its lower chamber—the House of Representatives. The Constitution clearly lays down that the Cabinet is responsible to Parliament, i. e. the House of Representatives. The Cabinet is collectively responsible to Parliament for its policies and programmes. Whenever it loses the confidence or support of the majority in the House, it has to resign and if an alternative cabinet, enjoying the support of the majority cannot be formed, the House is dissolved and a general election is held within 90 days at the most.

Parliament's power of control over the executive includes the powers to criticise the Government, supervise the administration and influence the policies of the Government. Parliamentary questions and deliberations over legislative measures are important methods of exercising control over the executive. Control over finance i. e. passing of the budget or power of the purse is another important method of exercising parliamentary control over the executive.

Ventilation and Redress of Grievances. The Parliament allows grievances to be ventilated and provides a forum in which governmental policies are not only stated, but also criticised and debated. The usual method for seeking redress of grievances is that of putting questions to ministers in Parliament. Normally 14 days' notice is required for asking questions; when a member hands in questions he may obtain an oral answer by marking them "Oral Reply", but only 3 such questions can be asked on a single day. Even questions marked in this way may be given written answers, if the Speaker so directs. Supplementary questions may be asked by any member immediately after the reply to the original question. Another method for speaking about a grievance is to raise any matter of administration "for discussion" for which at least 7 days' notice is required. The motion is in the form "That this House adjourns".¹ This is called an adjournment motion.

Amending Power. The executive proposes amendments to the Constitution and Parliament accepts, rejects or modifies them. Article 159 empowers Parliament to amend the Constitution from time to time. But there are certain limitations to the amendment of articles 10 (4), 14-31, 38, 63 (4), 70, 71 (1), 72 (4), 152, 153, and 159 (5) in that these articles cannot be amended without the consent of the Conference of Rulers. During the past 20 years, Parliament has amended the Constitution over twenty times, involving fourteen articles—45, 46, 48, 50, 53, 54, 55, 56, 57, 61, 62, 63, 65, and 67.

House-keeping Powers. The Constitution authorises Parliament to enact the necessary laws to provide for its own maintenance and to give each House the power to regulate its own procedure. The House of Representatives has a Standing Orders Committee, which proposes and prepares drafts of new Standing Orders and makes suggestions regarding modifications in the existing Standing Orders. The Senate

1. R.S. Milne, *op. cit.*, pp. 120-21.

also has its own Standing Orders. In exercise of these house-keeping powers, Parliament has passed several Acts of Parliament, viz., President of the Senate (Remuneration) Act 1960, Speaker (Remuneration) Act 1960, Parliament Members' (Remuneration) Act, 1960 etc.

Power to Punish for its Contempt. Both Houses of Parliament and their members have been granted certain privileges. Their breaches, if any, are punishable by the Houses concerned. Any person guilty of contempt of the House can also be punished by the House. In this respect, the House acts as a court.

Comments. The federal parliament is not a sovereign body like the British Parliament. It has to work under a written Constitution, which is federal in nature. It is bound by the provisions of the Constitution; it can legislate in respect of items included in the Federal and Concurrent Lists and only within a limited sphere in respect of the items included in the State List. Thus it resembles the Parliament of India. The sphere of parliamentary legislation, on the whole, is quite wide. Moreover, the Parliament possesses the usual powers—of legislation, control over the executive, control over finance, and the amending power.

'The Parliament of Malaysia is modelled on the British Parliament. The executive, the federal government, is responsible to Parliament and cannot survive without its support.... The Parliament of Malaysia, however, differs from the British Parliament in one important respect. The British Parliament is "supreme", its actions cannot be challenged by a court or by any other body. The Malaysian Parliament is not supreme in this sense. It is bound by the Constitution, and it is possible that some of its actions might be found by a court to be contrary to the Constitution and therefore invalid.'¹

If we compare the powers of the two Houses, we find that the House of Representatives, being a popularly elected

1. *Ibid.*, p. 114.

House, has much greater powers than the Senate. In this respect the Senate is very much similar to the Indian Rajya Sabha. The House of Representatives has two important powers which the Senate (Dewan Negara) lacks; these are: first, its control over the executive and second, its control over finance. But the Senate has been designed to fulfil a number of purposes: (i) It has been envisaged as a forum to which seasoned and experienced politicians and public men might get an easy access. Its value lies in talent, experience and knowledge. (ii) It serves as a debating chamber to hold dignified debates and it also acts as a revising chamber. (iii) It is designed to serve as a chamber where the States of the Federation are, to some extent, represented as States in keeping with the federal principle, and, therefore, it has been given some federal functions to discharge.

'In practice, however, the Dewan Negara does not act as a champion of local interests, or as a battle-ground between the Centre and the States. Even though the twenty-six members are elected by the State Legislatures, the members of the Dewan Negara vote, not at the dictate of the State concerned, but according to their own views and party affiliation. There is no provision in the Constitution requiring the members of this House to vote as the instructed delegates of the State Government or the Legislature concerned. They are not subject to any direct control of the State they seek to represent. The Dewan Negara has thus emerged as a forum where problems are discussed and considered from a national rather than a local plane'—(Nik Abdul Rashid)¹.

V. Concluding Observations

Government and Opposition. The relationship between the two is an important aspect of parliamentary democracy. The true working of democracy is bound to suffer if the

1. Suffian et al, *op. cit.*, pp. 138-39.

opposition is weak and divided. Such is the case in Malaysia, like India. In Malaysian Parliament the first thing to note is that there is no single "Opposition" with a recognised leader. Early in 1963 the Opposition parties set up a common front in order to oppose the formation of Malaysia in the form proposed by the Government, but this arrangement did not continue in the new House constituted after the election in 1964. Moreover, the Opposition has not been united on any major issue. The Speaker has to act as an intermediary between the leaders of the Government and those of the Opposition parties. In 1959 and 1960 the Opposition complained that many of their motions had been left undebated for months. Sometimes Opposition members protested when sufficient time was not allowed for debate on certain motions.

However, the Opposition parties are not expected to resort to unconstitutional methods for work in conjunction with Communist Front Organisations. With this object in view the Government gave a warning in Parliament about the restriction imposed on Opposition activities by the Government under the Internal Security Act. In view of the multi-racial nature of Malaysian society, one of the Standing Orders provides that it shall be out of order to use "words which are likely to promote feelings of ill-will or hostility between different communities in the Federation." Part of the problem arises from the fact that some of the parties are in a sense "racial", in so far as their main policies reflect the interests of members of particular races. Both the P P P and the PMIP which might be regarded as racial, had opposed the introduction of this standing order. The PMIP put forward the argument that its policies were ultra "communal". The PMIP wishes to fight for the Malays in this country and make Malay the national language. That is a national issue, not a communal issue."

"To sum up ; a general Opposition complaint is that the Government does not consult the Opposition enough and does not pay sufficient attention to Opposition suggestions. To be

sure, Government sometimes accepts Opposition amendments even, for instance, on the Internal Security Bill of 1960. But the Opposition has alleged lack of full consultation on some really vital issues, such as the formation of Malaysia. A contrary view is that sometimes there has been unjustified opposition just for the sake of opposing. . . A final point is that, just as the Opposition is split into several parties, so are its attacks on the Government usually fragmented and uncoordinated. After the 1964 general elections the Opposition was even weaker than before. The Socialists Front and the PPP lost many of their members...'¹

Stresses and Strains in the Conduct of House Affairs. 'In the conduct of House affairs, there are evident all the stresses and strains which accompany the transplantation of any alien growth to a new soil. Right from the start an attempt was made to set the correct tone by insisting that members, unless in formal Malay dress, should wear suits in the House. When Parliament first met, six Socialist Front members in shirt sleeves were turned away until they dressed themselves properly.' In late 1965 only 3 of the 144 members were women. Ethnically 74 were Malays, including Melanaus; 43 were Chinese; 21 were natives of the Borneo territories other than Melanaus; 6 were Indians or Ceylonese. The average age was a little over 40. Very few of the 134 members for seats in Malaya had had only a primary education. The rest were almost equally divided between those whose education had stopped at secondary level and those who had gone on to take either a university degree or a professional qualification.'²

Parliamentary Reform. There is an anomaly with regard to the holding of general elections. When Parliament is dissolved, a general election has to be held within 60 days in the States of Malaya and 90 days in Sabah and Sarawak. Such a distinction creates difficulties; it should, therefore, be abolished. Nik Abdul Rashid holds the view that by following the

1. R.S. Milne, *op. cit.*, pp. 122-24.

2. *Ibid.*, pp. 115-26.

Westminster model—based on simple majority system as a guiding principle—the principles of true democracy have not been followed. But we are not inclined to agree with his view. Even under the present system there are more than 20 political parties. Under any system of proportional representation, their number will increase greatly and would further obstruct the working of democracy.

Reform of Senate. Nik Abdul Rashid says that the present system does not reflect the value of democratic system of government, because the majority of the members (32) are appointed against 26 indirectly elected. They do not enjoy equal status with the lower House in terms of powers, members' remuneration and responsibilities, although they enjoy the same privileges and immunities. He suggests that in order to reflect a true Malaysian democracy, the chamber may continue to be partly elected and partly appointed. The present total number (58) may be retained and 2 Senators may continue to be elected by the Legislative Assembly of each State. Out of the 32 members, the Yang di-Pertuan Agong should have the power to appoint, say, 12 members to represent certain interests as envisaged by article 45 (2), but the remaining 20 should be equitably distributed, according to some principle, in proportion of the votes cast for the various parties in the general election. The best arrangement would be the basis of percentage of votes cast for each party. The chairman of the Election Commission will notify the Clerk of the Senate of the votes cast, the percentage obtained and the number of seats to be allowed to that party. Various parties will nominate their representatives accordingly.³

But Milne doubts how much such a reform would justify the continued existence of the Senate. Apart from the fact that it is normal for democratic countries to have two chambers, there is the special reason that, because Malaysia is a federation, a second chamber is especially desirable, since it represents the States and is an instrument for protecting States'

3. Suffian et al, *op. cit.*, pp. 157-58

rights. 'But a study of Senate debates shows that not even the Senators chosen by the State Assemblies actually perform this role. More generally, second chambers are supposed to prevent hasty and ill-considered legislation by providing an element of mature deliberation not attainable by first chambers. But the Malaysian Senate does not work this way; it rather acts as a rubber-stamp for the House of Representatives. There is often not enough delay between a bill's passage in the House and its introduction in the Senate to allow proper consideration.' Although the Senate's powers are the same as those of the House, excepting financial legislation, yet in practice the Senate has shown little initiative.¹

Three other reforms as suggested by Abdul Rashid may briefly be stated here: First, at present, the voices of the minority parties who have lost in the election are not heard in Parliament. By having this arrangement, a true principle of democracy will be at work. 'We need dissenting opinions, we need constructive criticism, we need to hear what the small men in the small parties have to say, for they are also citizens of the country'. It is further submitted that the time has come for Parliament seriously to consider invoking the already entrenched article 45(4) of the Constitution. By having a fully elected Senate like that of the United States, more powers may be vested in it, especially the power of checking the work of the Executive.

Secondly, States are allocated a number of parliamentary seats ranging from 2 to 24; and States are further sub-divided into constituencies. By and large they are political in nature and, of course, partisan in character. As a result some constituencies have been "gerrymandered". Gerrymandering is bound to create many administrative problems not only for the Election Commission, but also for the voters, the constituents, and the public. Therefore, gerrymandering must be eliminated, by reforming the demarcation of constituencies (by an independent delimitation commission as in India).

1. R.S. Milne, *op. cit.*, 127-28.

Thirdly, members of Parliament are representatives of the people ; but their roles vary. Some are full-time and others are part-time. The former are those politicians who have retired from active professions, business, trade or industry ; and the latter are those politicians who are actively engaged in their own professions or business, etc. To the former, the allowance of £1,500 per month (in the case of members of the House of Representatives and £ 1,000 per month (in the case of members of the Senate) is a meagre sum. The object of paying such a remuneration is to compensate for the time lost and energy consumed while attending to parliamentary business. Therefore, their remuneration should be increased to a level which will enable them to devote their full attention to parliamentary business.¹

1. Suffian et al, *op. cit.*, pp. 158-59.

Judiciary and Rights of Citizens

I. Organisation of Courts

Introduction. The present system of courts followed the spread of British influence in Malaya. The 1957 constitution continued the prevailing judicial system by providing that there should be a Supreme Court and such inferior courts as might be determined by federal law. The Supreme Court had two divisions : the High Court, constituted by a single judge and the court of Appeal, constituted by three or more judges. In addition, there was provision for appeal, beyond Supreme Court, to the Judicial Committee of the Privy Council in London.

In 1963, with the formation of Malaysia, the Supreme Court disappeared from the scene when article 121 was amended to provide that the judicial power of the Federation shall be vested in three High Courts of coordinate jurisdiction and status and in such inferior courts as may be provided by law—the three High Courts being those of Malaya, Singapore and

Borneo. Since the separation of Singapore in 1965, there are now only two, each headed by its own Chief Justice. From Malaysia Day, 16 September 1963, with the abolition of the Supreme Court, the Court of Appeal was abolished and replaced by the Federal Court. In fact this was only a renaming exercise.

The Federal Court (FC). It is the highest judicial authority in the country. The F C consists of the Lord President, the two Chief Justices (of the two High Courts) and four federal judges. Usually it sits in a panel (bench) of three and occasionally in a panel of five. A High Court judge nominated by the Lord President may also sit on it. It is presided over by the Lord President or by the senior-most judge. It travels on circuit to the major state capitals, but it has its principal registry in Kuala Lumpur.

Two High Courts (HCs). The High Court in Malaya is for the States of Malaya and has its principal registry in Kuala Lumpur. The High Court in Borneo is for the Borneo States—the States of Sabah and Sarawak. Its principal registry is located in a place determined by the Yang di-Pertuan Agong (the Supreme Head of State). Each of the two HCs consists of a Chief Justice and not less than four other judges; but the number of other judges is not to exceed, unless Parliament decides otherwise, 12 in the H C in Malaya and 8 in the H C in Borneo.

Judicial Commissioner. Any person qualified for appointment as a judge of a H C may sit as a judge of that court, if designated for that purpose (as occasion requires). For the despatch of business of the HC in Borneo in an area in which a judge of the court is not for the time being available to attend to business of the Court, the Yang di-Pertuan Agong, acting on the advice of the Lord President of the F C or for an area in either State the Governor of the State, acting on the advice of the Chief Justice of the Court, may by order appoint to be judicial commissioner in that area, for such

period or for such purposes as may be specified in the order, an advocate or person professionally qualified to be admitted as an advocate of the court.

Subject to the order appointing him, a judicial commissioner has, in the area for which he is appointed, to perform such functions of a judge of the HC in Borneo as appear to him to require to be performed without delay: and anything done by a judicial commissioner, when acting in accordance with his appointment, has the same validity and effect as if done by a judge of that court, and in respect thereof he has the same powers and enjoys the same immunities as if he had been a judge of that court.¹

Appointment of Judges. Lord President of the FC, the Chief Justices of the HCs and the other judges of the FC and of the HCs are appointed by the Yang di-Pertuan Agong, acting on the advice of the Prime Minister, after consulting the Conference of Rulers. Before tendering his advice as to the appointment of judges of the FC other than the Lord President, the PM has to consult the Lord President; and before tendering his advice as to the appointment of the Chief Justice of a HC, the PM has to consult the Chief Justice of each of the HC and if the appointment is to the HC in Borneo the Chief Minister of each of the Borneo State.

Resignation or Removal. A judge of the FC may at any time resign his office, but he cannot be removed from office, except in accordance with the following provisions. If the PM or the Lord President after consulting the PM, represents to the Yang di-Pertuan Agong that a judge of the FC ought to be removed on the ground of misbehaviour or of inability from infirmity of body or mind or any other cause, properly to discharge the functions of his office, the Yang di-Pertuan Agong will appoint a tribunal and refer the representation to it; and may on the recommendation of the tribunal remove

1. Article 121.

the judge from office¹.

Subordinate Courts. Subordinate or inferior courts, established by federal law, include sessions courts, magistrates courts and Penghulum courts, which exercise a limited and local jurisdiction. Such courts in Sabah and Sarawak are governed by their respective Subordinate Courts Ordinance. The ordinance makes provision for three main classes of magistrates' courts—first class, second class and third class (as in India). First class magistrates are all legally qualified persons. Where the Governor declares such a magistrate to be a stipendiary magistrate, there he may pass sentence of imprisonment for a term not exceeding 3 years and impose a fine not exceeding £ 5,000/-. Second and third class magistrates deal mainly with minor cases and they are all administrative officers. In addition, there are religious courts for Muslims; they enforce religious observances and regulate the domestic, particularly the matrimonial, life of the Muslims. They are established by the State legislatures and form a separate system of courts. But there is no State judicial system with general functions.

II. Other Aspects

Jurisdiction. The FC has exclusive jurisdiction to decide appeals from decisions of a HC or a judge thereof (except decisions of a HC given by a registrar or other officer of the court and appealable under federal law to a judge of the court). It has such original or consultative jurisdiction as is specified in articles 128 and 130. Under its original jurisdiction, the FC has the power to interpret the Constitution and decide disputes between States and between any State and the Federal Government. Article 128 (1) also authorises it to determine whether a law made by Parliament or by the legislature of a State is invalid on the ground that it makes provision with respect to a matter to which the particular legislature has no power to make laws. This is the power of judicial

1. Article 122.

review. It has referral jurisdiction under clause (2) of art. 128. Under this art. where in any proceeding before another court a question arises as to the effects of any provisions of the Constitution, the FC has jurisdiction to determine the question and remit the case to the other court to be disposed of in accordance with the determination. Finally, it has advisory jurisdiction under article 130, which gives power to the Yang di-Pertuan Agong to refer to the F C for its opinion any question as to the effect of any provision of the Constitution, which has arisen or appears to him to arise. The jurisdiction of the High Court in Malaya is limited to the States of Malaya and that of the High Court in Borneo to the States of Sabah and Sarawak. Each High Court has original and appellate jurisdiction. In its original jurisdiction fall those cases which cannot be heard by the sessions courts under them. Appeals from the decisions of the sessions courts lie before the two H Cs. The H Cs also have the power to interpret the Constitution, i.e. the power of judicial review.

The Federal and High Courts have power to interpret written law (Federal Constitution Ordinance, 1972 section 2) and the Constitution, having the force of law. All the three courts have this power, and not only the Federal Court. The courts have the power to declare law enacted by the legislature void : (a) in the case of both federal and State written law, if it is inconsistent with the Constitution ; (b) in the case of federal written law, because it is outside the power of Parliament to enact, and in the case of State written law, because it is outside the power of the State legislature to enact; and (c) in the case of State written law, because it is inconsistent with federal law. (Tun Mohamed Suffian).¹

Subject to any limitations imposed by or under federal law, any order, decree, judgment or process of the courts or of any judge thereof (so far as its nature permits) have full

1. Suffian et al, *The Constitution of Malaysia : Its Development 1957-77*, pp. 237-38.

force and effect according to its tenor throughout the Federation, and may be executed and enforced in any part of the Federation accordingly. Federal law may provide for courts in one part of the Federation or their officers to act in aid of courts in another part.

Increased Jurisdiction of Subordinate Courts. In 1969 the jurisdiction of sessions courts was increased by the Emergency (Essential Powers) Ordinance No. 14, 1969, which was subsequently made permanent by the Courts (Amendment) Act of 1971. Now a sessions court has jurisdiction to try all offences for which the maximum imprisonment provided by law does not exceed 10 years. The Yang di-Pertuan Agong may also, on the advice of the Chief Justice, confer on any president of the sessions court special jurisdiction to try offences for which the term of imprisonment by law does not exceed 14 years. As regards sentences, a sessions court may now pass any sentence not exceeding : (a) 5 years' imprisonment or, in the case of a president endowed with special jurisdiction, 7 years imprisonment ; (b) a fine of £ 1,000, or, in the case of a president with special jurisdiction, a fine of £ 20,000 ; (c) whipping upto 12 strokes : or (d) any sentence combining any of the above.

Independence of the Judiciary. The separate Ministry of Justice was abolished in 1970 on the ground that its existence was inconsistent with the independence of the judiciary. Responsibility in Cabinet and Parliament for the machinery of justice was transferred to the Prime Minister. Today, in the absence of a Minister of Justice, the Lord President and the two Chief Justices, in addition to sitting in court and writing judgments have also to worry about the courts under them, about their staff and administrative needs. In interpreting the Constitution, the judges have to keep in mind that they have to protect the citizens against possible abuses of power by agents of the government and to act as arbiters in disputes between state governments or between federal and state governments.

It is, therefore, very essential that the judges act independently. The Constitution provides that judges shall hold office until the age of 65 and that their remuneration will be charged on the Consolidated Fund. A judge can only be removed with difficulty and in accordance with the prescribed procedure, described in the preceding section.

By the 1957 Constitution judges could be appointed only on the recommendation of the Judicial and Legal Service Commission. But since 1960 the Supreme Head has to act on the advice of the Prime Minister, after consulting the Conference of Rulers. For the appointment of the judges, other than the Lord President, the Lord President has to be consulted. Therefore, the risk of political interference over judicial action was expected by some; but such influence has not been apparent so far. The Prime Minister vigorously repudiated fears expressed in the Parliament of political influence with the judiciary. "I do not think any Prime Minister in his right senses would interfere. Once that happens there will be no more law and order and there will be no respect for the law." An apparent example of the absence of political interference occurred in 1964, when an Alliance Minister lost a libel case in which one of the defendants was an opposition member of Parliament.¹

Critical Observations by Tun Mohamed Suffian. The judiciary is still unpoliticised. The judges in determining the disputes that come up before them are under a duty to act impartially without fear or favour and the Constitution forbids the executive and the legislature from telling them how a case should be decided. In fairness to the executive and the legislature, it must be said that they have never at any time tried to influence the judiciary. There has also been an increasing professionalism of subordinate Courts. Before the war administrative officers such as District Officers and Assistant District Officers did part-time duty sitting as magistrates.

1. R.S. Milne, *Government and Politics in Malaysia*, p. 177.

Even today, while it is true that DOs and ADOs do very little work on the bench, certainly in peninsular Malaysia, they have not succeeded in employing only qualified lawyers and magistrates.

Before independence, the machinery of justice was hybrid, i.e. partly federal and partly State. Under the present Constitution, the administrations of justice including the constitution and jurisdiction of all courts other than Muslim courts and the jurisdiction and powers of all such courts, is wholly a federal subject, except as regards the appointment of superior judges. Also, under the present constitution the posting of superior judges to a State constitutionally may be done by the head of the judiciary without the concurrence of any federal authority or prior consultation with the State. In 1957 an independent Judicial and Legal Service Commission was established to appoint, confirm, promote, transfer and discipline officers of the judicial and legal service; it was abolished in 1960, but was again revived on Malaysia Day in 1963¹.

III. Rights of Citizens

Like other democratic constitutions, that of Malaysia embodies them and ensures their observance. In this sense, Malaysian citizens have fundamental rights. The various rights and freedoms, together with restrictions, as enshrined in the Constitution are as follows:—

1. *No Un-lawful Detention.* (i) No person can be deprived of his life or personal liberty save in accordance with law. (ii) Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him. (iii) Where a person is arrested he is to be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal

1. Suffian et al, *op. cit.*, pp. 241-50.

practitioner of his choice. (iv) Where a person is arrested and not released he shall without unreasonable delay, and in any case within twenty-four hours (excluding the time of any necessary journey) be produced before a magistrate and shall not be further detained in custody without the magistrate's authority.

2. *Discrimination Prohibited.* (i) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying of any trade, business, profession, vocation, employment. (ii) There can be discrimination in favour of any person on the ground that he is a subject or the Ruler of any State. (iii) No public authority can discriminate against any person on the ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority. But this article does not invalidate or prohibit: (a) any provision regulating personal law; (b) any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, or persons professing that religion; (c) any provision for the protection, well-being or advancement of the aboriginal people of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public services; (d) any provision prescribing residence in a State or part of a State as a qualification for election or appointment to any authority having jurisdiction only in that State or part, or for voting in such an election; (e) any provision of a Constitution of a State, being or corresponding to a provision in force immediately before Merdeka Day; and (f) any provision restricting enlistment in the Malay Regiment to Malays.

3. *No Banishment, Rights of Movement and Residence.*

- (i) No citizen can be banished or excluded from the Federation. (ii) So long as under this Constitution any other State is in a special position as compared with the States of Malaya, Parliament may by law impose restrictions, as between that States and other States, on the rights conferred by the preceding clause in respect of movement and residence.

4. *Rights to Freedom of Speech, to Assemble Peaceably and to Form Associations.* Subject to the foregoing provisions : (a) every citizen has the right to freedom of speech and expression. (b) all citizens have the right to assemble peaceably and without arms ; and (c) all citizens have the right to form associations. But Parliament may by law impose on the rights of freedom of speech and expression, such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence. Parliament may by law also impose on the right to assemble peaceably, such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof or public order ; and on the right to form associations, such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, public order or morality. Restrictions on the right to form associations may also be imposed by any law relating to labour or education.

5. *Right to Profess and Practise Religion.* (i) Every person has the right to profess and practise his religion. (ii) No person can be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own. (iii) Every religious group has the right ; (a) to manage its own religious or charitable purposes; and (b) to acquire and own property, hold and administer it in accordance with law. (iv) State law may control or restrict the propagation of any religious doctrine

or belief among persons professing the Muslim religion. (v) This article does not authorise any act contrary to any general law relating to public order, public health or morality.

6. *No Discrimination in Matters of Education.* There can be no discrimination against any citizens on the grounds only of religion, race, descent or place of birth (a) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or (b) in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside the Federation), (ii) Every religious group has the right to establish and maintain institution for education of children and provide therein instruction in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law; but federal law or State law may provide for special financial aid for the establishment or maintenance of Muslim institutions or the instruction in the Muslim religion or persons professing that religion. (iii) No person can be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own. (iv) The religion of a person under the age of eighteen years is to be decided by his parent or guardian.

7. *Right to Property.* No person can be deprived of property save in accordance with law; and no law can provide for the compulsory acquisition or use of property without adequate compensation.¹

In the Constitution the following nine liberties or rights are included as fundamental: (i) liberty of the person, (ii) freedom from slavery and forced labour; (iii) protection against retrospective criminal laws and repeated trials; (iv) prohibition against banishment and freedom of movement; (v)

1. Articles, 5-13.

equality ; (vi) freedom of speech, assembly and association ; (vii) freedom of religion ; (viii) rights in respect of education and (ix) rights of property. The fundamental liberties can be placed in two distinct categories, first, those that are absolute in terms of the constitutional provisions and second, those that are limited by the terms of the constitutional grant itself.

Article 153 appears in Part XII of the Constitution (General and Miscellaneous). Part II, 'Fundamental Liberties' must be read together with article 153, because the latter qualifies the provisions on equality, by virtue of the special status accorded to Malays and natives of the Borneo states in the public service, scholarships, exhibitions, and other similar educational or training privileges or special facilities, and in permits or licences for the operation of trades and businesses. Part XI, 'Special Powers Against Subversion and Emergency Powers,' permits by article 149, the suspension of articles 5, 9 and 10 and perhaps of others of the fundamental liberties, since it validates any legislation otherwise outside the legislative power of Parliament, provided Parliament follows the drafting formula of article 149—(Harry E. Groves).¹

¹ J. Suffian et al. *op cit.*, pp. 28-30.

Other Aspects of Government and Administration

I. Elections

Electoral System. The Constitution provides for single-member constituencies for the election of both the members of the House of Representatives and State Legislative Assemblies. Members are elected on the basis of plurality system, i.e. the candidate who secures the highest number of votes in a constituency is declared elected. A good feature of the electoral system is that there are single or joint electoral rolls. In other words, elections are not held on communal or racial lines. Another good feature is that the conduct of elections, preparation of electoral rolls etc. has been entrusted to an election commission, which is an autonomous body. The requirement that the Election Commission should be honest, competent and non-partisan was incorporated in the Constitution of 1957. The same provision was retained after the formation of Malaysia. Thus elections are held in a free and fair manner. In

all the foregoing respects, Malaysian electoral system is very much similar to that of India.

Constitution of the Election Commission There is an Election Commission (EC), which is constituted in accordance with article 114. The EC is independent of the Government, as its members are appointed by the Yang di-Pertuan Agong after consultation with the Conference of Rulers. It consists of a Chairman and three other members. The Constitution provides that a member may not be removed from office except on the same grounds and in the same manner as a judge. Notwithstanding this, he automatically ceases to hold office on reaching the age of 65 years. The Yang di-Pertuan Agong may remove him from office if he (a) is an undischarged bankrupt; (b) engages in any public office or employment outside the duties of his office; (c) is a member of either House of Parliament or of the Legislative Assembly of a State. The remuneration of election commissioners is charged on the Consolidated Fund and is thus removed from annual debate and approval by Parliament. Further, the remuneration of members can not be altered to their disadvantage after their appointment.

Duties (Funtions) of the EC. These include : (i) conduct of elections to the House of Representatives and the Legislative Assemblies of the States ; and (ii) preparation and revision of electoral rolls for such elections. In accordance with article 113(3), the EC was also required, at intervals of not more than 8 years to review the division of the Federation and the States into constituencies and recommend such changes as they might think necessary in order to comply with the provisions contained in the Thirteenth Schedule. Such reviews of constituencies for the purpose of election to the Legislative Assemblies were to be undertaken at the same time as the reviews of constituencies for the purpose of elections to the House of Representatives. But by an Act of 1962 the power to delimit parliamentary constituencies was transferred from the EC to Parliament and the formula for the delimitation of constituencies under a 'quota' system which was written into the

original constitution was abolished. Federal and State law may authorise the EC to conduct elections other than those mentioned above. Finally, so far as may be necessary for the purposes of its functions, the EC may make rules, but such rules have effect subject to the provisions of federal law.¹

II. Local Government

Growth. In January 1948, there were only three municipalities in Malaya, namely those of Singapore, the Town and Fort of Malacca and George Town (Penang). The Governor or High Commissioner appointed municipal commissioners, not less than five in number, to administer the affairs of the municipality. Apart from the officials, others appointed by the commissioner in Penang comprised 3 doctors, 1 lawyer, 1 accountant, 1 merchant, 1 schoolmaster, 1 landlord and 2 businessmen. The President, as head of the municipality, stood as its representative and medium of communication with the general public of the town, private bodies and individuals, the press and the central government. He was the representative of the municipality for the central government and a senior administrative officer of the government. He coordinated and frequently initiated municipal activities. Arising out of his position as Chairman of meetings of commissioners, head of the executive staff, and public representative of the municipality he had special facilities for observing the working of the whole machinery of local government. Apart from public streets, public sewers, public canals and public bridges, the commissioner controlled the municipal fund. Functions of the municipalities were in brief: construction and maintenance of streets, bridges, parks and gardens; recreation grounds and markets; dairies, food and drink; lighting and fire prevention; transport services and traffic; and all matters necessary for or conducive to the public safety, health or convenience."

Town Boards and Rural Boards were the distinctive creation of the Malay States, as opposed to the settlements of

1. Article 113.

Singapore, Penang and Malacca, for the administration of municipal affairs of towns and villages within the territory of those States. They were organs of the central or State government specially created to deal with local affairs, with a certain amount of local representation supplied by unofficials nominated to their boards but with power definitely vested in the government. The position of town boards in the former Malay States had materially changed, since they had directly been under British residents. Although State governments held a dominating position with respect to town boards, the Federation still retained certain residuary powers, particularly in regard to finance and personnel and also through the High Commissioner and through the legislature. For all practical purposes, it could be said that town boards were no longer subject to central government control but instead to State government control.

Although unofficial members were nominated to the boards to represent the various communities and local opinion on every board, there had always been a handful, if not always a majority, of officials. The paramount feature of town boards was in truth the dominating position of the Chairman, who whenever he thought fit, could convene meetings. Some town boards held their meetings publicly, while others held them privately. The boards were empowered firstly to exercise powers and perform the duties conferred or imposed upon them ; and secondly, to advise the Chairman in respect of the exercise of the powers conferred upon them. The State authority after consultation with the board determined what rates should be imposed and in what areas.

Outlines of Local Authorities. The details of local government in Malaya are complex, but the broad outlines may be understood, if the following points are kept in mind : (1) only a small portion of Malaya, mainly urban, was covered by local authorities ; (2) the system was largely imposed from above ; and (3) the prevailing pattern resembled local government in Britain, at least outwardly. Much of the complexity of the

system arose from the fact that various developments in the field of local government did not proceed at an equal pace.

The Local Authorities Election Ordinance, 1950 provided, among other things, that municipalities should have elected majority of members. All members of the municipal council could be elected, and the President of the council could be elected from among the members. The Town Board (Amendment) Act, 1954 provided some financial autonomy. Town councils became statutory bodies and they were permitted to have a separate fund instead of having their revenue and expenditure managed by the State. By 1965 about 65 per cent of the New Villages had fully elected chairmen and a measure of financial autonomy. Those New Villages, which do not have elected councillors, have informal committees which exist to advise the District Officer (DO).

The complexity of the system can be seen from the following range of types of local authorities in existence :

Cities	1
Municipalities (including Kuala Lumpur)	8
Town Councils (financially autonomous)	25
Town Councils (not financially autonomous)	11
Town Boards (financially autonomous)	5
Town Boards (not financially autonomous)	32
Rural District Councils (financially autonomous)	4
Rural District Councils (not financially autonomous)	3
Local Councils	296
New Village Committees	181

Constitutionally every local authority (except that for Kuala Lumpur, the federal capital) is subordinate to State

government. Officials are still members of most local authorities; the D O is the president/chairman of the Council or Board and the District Health Officer and the District Engineer are usually members. All of them have to submit their budgets to the state government for prior approval. Most of them are also dependent on state government authorities for professional and technical advice, because of their limited financial resources. The government of Kuala Lumpur, since 1961 is in the hands of a federal commissioner, appointed by the Supreme Head. He is directly responsible to the Minister of the Interior and is advised by an Advisory Board, consisting of 6 official members (heads of various government departments) and 5 unofficial members, who are prominent citizens of various communities in the capital.

While some local councils perform simple functions of public health and communications, others may have a large number of activities. An idea of the functions performed by the City Council of George Town (Penang) can be had from its standing committees: health, water, and veterinary; town planning and building; transport, vehicles and fire brigade; public works, traffic; electricity supply; establishment and disciplinary; finance; assessment appeals, and general purposes. It has 15 elected councillors, who choose their own mayor and deputy-mayor.

Local Bodies in Sarawak and Sabah. Local bodies in Sarawak had their beginning in 1921. Great advances were made in Kuching, where by 1953 a municipal council was set up with a measure of autonomy. The 1957 ordinance gave the council more powers, and it became fully elected. The first racially mixed local authority was set up at Limbang in 1948; and gradually such bodies were set up at other places. By 1957 the whole of Sarawak was covered by local bodies and in 1959 elections for district councils were held on adult franchise. In Sabah (North Borneo) the first District Council was formed in 1952 and later such councils were set up in other districts. Town Boards were established

in 1954-55 in four urban centres. First elections on adult franchise were held for Town Boards and District Councils in 1962.¹

National Council for Local Government. The Constitution of the Federation provides for a National Council for Local Government, consisting of a minister as Chairman, one representative from each of the States, who are appointed by the Ruler or Governor and such representatives of the Federal Government as that Government may appoint, but the number of such representatives cannot exceed ten. It is summoned to meet by the chairman as often as he considers necessary, but at least one meeting in a year is necessary. If the chairman or a representative of a State or of the Federation is unable to attend a meeting, the concerned authority may appoint another person to take his place at that meeting.

It is the duty of the National Council to formulate from time to time in consultation with the Federal Government and the State Governments a national policy for the promotion, development and control of local government throughout the Federation and for the administration of any laws relating thereto; and the Federal as well as the State Governments have to follow the policy so formulated. It is also the duty of the Federal Government and the Government of any State to consult the National Council in respect of any proposed legislation dealing with local government and it is the duty of the National Council to advise those governments on any such matter. The Federal Government or the government of any State may also consult the Council in respect of any other matter relating to local government, and it is the duty of the Council to advise that government on any such matter.²

III. Governmental Administration

Importance. "In Malaysia the administration" was the most powerful and most prestigious set of structures in the

1. R.S. Milne, *Government and Politics in Malaysia*, pp. 164-77.

2. Article 95.

society. Before independence government was the most important institution and, in the absence of politicians, the administration was the government. Since Independence that power had been shared with politicians, but many of the senior politicians were former administrators. They had no desire to undermine the status or effectiveness of bureaucracy, despite occasional grass-roots conflicts and the need to lubricate political organisations with patronage. In this administrative state the senior civil servants were far more decorated than politicians or businessmen.'

Though Malaysia was a federal state, yet the centre was dominant; and the main political parties were also national. Most of the financial resources were in the hands of the federal government. Aside from the usual functions of defences, foreign relations, and monetary policy, even education, health, police, commerce and industry were also controlled by the federal government. The traditional unit of organisation in federal government was the *department*, numbering more than forty. The important departments even before independence were: agriculture, education, irrigation, radio, inland revenue, public works, immigration, telecommunications, post office, customs and excise. After independence new departments of statistics, civil aviation and television were added. 'The departments were functionally specialized, self-contained operating units conducting programmes in well-defined spheres. Some, especially the older professional ones (like the Veterinary Department) contained a major professional service, and the head of the department was ex-officio head of the service.'¹

Government Departments and other Governmental Bodies. The number of government departments is not fixed, it may be increased or decreased according to convenience by the government. Each ministry usually has more than one

1. Milton J. Esman, *Administration and Development in Malaysia*, pp. 67-79.

department ; and a department deals with subjects which are related to each other. But whatever the division of responsibilities, coordination between different departments is necessary. To overcome the existing lack of coordination, a system of district rural development committees in all the 70 districts was introduced ; each committee is headed by the District Officer ; above the district level there are eleven State rural development committees. Besides the departments, there are some other government bodies, such as the Central Bank, the Central Electricity Board, and the Federal Land Development Authority. They have discretion in their day-to-day administration, though control over the general policy of each such organisation is exercised by the government through a minister.¹

Ministries. After independence came ministers and ministries, and with them came new decision centres controlled by senior administrative officers. Three types of ministries came into existence : 1) those like foreign affairs and commerce and industry which are staffed in all key posts by Malaysia Home and Foreign Service (MHFS) Officers ; (ii) the "integrated" ministries like agriculture, health, information and transportation, whose finance, personnel and house-keeping activities are centrally controlled by the ministry, while the constituent departments maintained their identity and operated their own action programmes ; and (iii) the "non-integrated" ministries like public works and finance where the constituent departments are within a minister's portfolio, but continue to operate their programmes independently and to deal directly with the Treasury and the Federal Establishment Office (FEO) on their financial and staffing requirements.

The Treasury and the FEO, the key central agencies, on account of their highly centralised patterns of detailed

1. R.S. Milne, *op. cit.*, pp. 140-41.

control, inhibited the development of initiative and responsibility in the departments and in the ministries. The development budget is drafted by the Economic Planning Unit (EPU) of the Prime Minister's department. The real powers of the EUP over administration is in its influence over development funds, its control over foreign technical assistance and its role in negotiating economic assistance with foreign donors and lenders. The FEO is a large staff-agency which controls the personnel system.

Another important part of the federal government are the statutory corporations, which are totally owned, financed and controlled by the government. But they are non-governmental in the sense that they are not subject to normal controls exercised by the Treasury and the FEO over finance and staffing, as in the case of departments. Their jurisdictions are mostly confined to: (a) commercial activities, such as the National Electricity Board; (b) development activities for the benefit of Malaya like the Federal Land Development Authority and Federal Marketing Authority; and (iii) miscellaneous activities, such as the Federal Industrial Development Authority, and National Language and Culture Centre. The main reason for the increase in their number has been the desire to mitigate the rigours of normal financial, procurement and personnel controls for activities which require swift action, innovation and dynamism.

Territorial Administration. Nine of Malaysia's thirteen States were headed by hereditary/Malay Sultans and the other four by governors, who were appointed by the King (actually selected by the Prime Minister). In each state there is an elected unicameral assembly responsible for electing a *Mentri Besar* (or Chief Minister) and an Executive Council which shares the executive functions. Below this structure is the administration headed by a State secretary, who is a senior MHFS Officer. In addition to a small secretariat, which assists the Chief Minister, each state had two other

senior officers—one state financial commissioner and another a state commissioner of lands and mines. There are also many departments responsible for carrying on functions assigned to the states by the Constitution, such as agriculture, forests, fisheries, drainage, irrigation and public works. The pattern of administration in Sabah and Sarawak is different; because their heads of departments belong to the local civil service. The state secretaries regard themselves as administrators qualified in personnel, finance, housekeeping and land activities. Parallel to the state secretaries and the state departments are the state officers of agencies run directly by the federal government, such as police, health, education and telecommunication.

Local Administration. It was controlled by district officers. In West Malaysia there were 71 districts, each headed by a district officer directly responsible to the state secretary. The district officer belonged to the MHFS, except in the former unfederated states where he belonged to a small state civil service. He was the most important man in his area. In most states, he was at the same time head of the land office; he or his junior was also chairman of the town councils or other local bodies. 'The modern district officer was thus asked to combine two roles: he was still the authoritative senior representative of government, but he was also expected to be the prime mover in rural development, a tutor, and an agent of social change.' The district was broken down into *mukims* or wards, each with a resident *penghulu*, a Division III officer responsible to the district officer. He was a fulltime officer selected in most states by examination but in a few by hereditary succession. The net work was completed by the *hetua kempong*, the head man in each village, appointed by the Chief Minister as the governments' representative. As a pillar of the ruling party, he was expected to represent authority as well as to be the spokesman for the villagers themselves, even though he was not responsible to them in any institutionalised way.

'State government was the backwater in contemporary Malaysia. Modern change-oriented political leadership gravitated to the federal level; modern administrative and professional personnel belonged to federal cadres; financial resources were over-whelmingly in federal hands, and so were the main functional sectors either by constitutional provision or by virtue of the leadership, drive, and financial power of the federal government... State government was the repository of tradition, the sultans and their courts and the Islamic religious establishment, of which each sultan was the head and which maintained close and conservative surveillance over the lives of Malays, especially in rural areas. The state civil services were inferior to the federal and in some cases were afflicted with nepotism and patronage... The states, as instruments of economic development and modernisation, were an anachronism in Malaya. They had not served as laboratories of experimentation, but they provided some opportunities for training and experience in small-scale political management and a secondary source of recruitment to positions of national political leadership.'¹

Administrative Reform. The *Montgomery-Esman Report*, 1966 made a number of recommendations for improving administrative system in the Federal Government of Malaysia. It called for three major governmental actions: (1) The creation of a Development Administration Unit (DAU) in the Prime Minister's Department, staffed by professional management analysis. (2) Improvement of the government's education and training programmes for all levels of the civil service. (3) Strengthening the professional competence of the MCS so that it can provide the necessary administrative leadership for the rapidly developing country. After the report had been accepted in principle, the Ford Foundation was asked to provide assistance to set up the new DAU and to launch its programme. It was formally activated on 1 July 1966.

1. Milton J. Esman, *op cit.*, pp. 80-95.

Initiating the process of induced social change comprised three inter-related tasks : building a competent and viable organisation, designing and managing an action programme and gaining acceptance and influence in the environment. For a new and modestly staffed organisation, the DAU in its first three years spread widely into government operations. It paved the way for centralised procurement and supply management in the Treasury. It produced the first organisational and functional hand-book of the Malaysian Government. Training for development was the fundamental project undertaken by the DAU in the early years. It also introduced programme budgeting.¹

IV. Civil Services (MCS)

An account of Malayan civil service as given by V.S. Winslow in his contribution 'The Public Service and Public Servants in Malaya' may briefly be stated here. The public service had grown on the British colonial model, with its tradition of political impartiality, lengthy, loyal service and a sizeable majority of expatriates in the top echelons commanding fairly attractive salaries. It was only after the Malayan move towards federalism in 1948 and the complete overhaul of 1957 that numerous subsequent modifications in the federal service took place. The term 'public service' is not used synonymously with "civil service", because a member of the public service holds 'an office of profit, it includes certain other offices as well, such as those of the judges. For purposes of the Constitution the public services include : (i) the armed forces ; (ii) the judicial and legal service ; (iii) General public service of the Federation ; (iv) the police service ; (v) education service and so on.

By 1956, the process of 'Malaynization' of the public service was under way for the purpose of gradually filling

1. Suffian et al, *The Constitution of Malaya: Its Development 1957-77*, pp. 143-85

Division I posts with qualified and experienced Malaysians. A Commonwealth Constitutional Commission, appointed under the Chairmanship of Lord Reid, to make recommendations for a constitution for the independent Federation of Malaya, accepted the recommendations of the 'principles' put forward by the London Report of 1956, regarding the establishment and control of public services generally. These may be summarised as follows: (i) political impartiality; (ii) promotions policy should be regulated in accordance with publicly recognised professional principles; (iii) a reasonable security of tenure; and (iv) the establishment of an independent public service commission.

Article 132(1) of the Constitution lists 8 categories of 'public services', which fall within the jurisdiction of service commissions, of which the most important is the Public Services Commission (P S C). Other commissions are: Armed Forces Council, Railway Service Commission, the Judicial and Legal Service Commission, and Education Service Commission. Before Merdeka, the States already had their own civil services. The Malaya States were given (by the Reid Commission) an option: they might establish their own service commission or, by laws passed by their legislatures, place responsibility with the P S C over all or any persons in their State public services. On independence, the P S C's jurisdiction was over; and the concept of 'joint services' was included in the Constitution. These were shared, common or unified services, common to the two or more states, or to the Federation and one or more of the states. In 1960, a constitutional amendment to article 319 extended the jurisdiction of the P S C to the judicial and legal service also, but the Malaysia Act, which came into force on 16 September 1963, restored the Judicial and Legal Service Commission. In 1976, by the Constitution (Amendment) Act 1976, the P S C's jurisdiction was extended.

There was no express provision in the Constitution to the effect that public servants held office during the pleasure

of the King or State Ruler. But the constitutional (Amendment) Act, 1960 inserted clause 2A in article 132 as follows: 'Except as expressly provided by this Constitution, every person who is a member of any of the services...holds office during the pleasure of the Yang di-Pertuan Agong, and, except as expressly provided by the Constitution of the State, every person who is a member of the public service of a State holds office during the pleasure of the Ruler or Governor'. However, article 135 provides protection to the public servant in respect of 'dismissal' or 'reduction in rank'. Clause (2) of the article provides that a public servant shall not be dismissed or reduced in rank without being given 'a reasonable opportunity' of being heard.¹

Profile of Services in 1965. Federal Establishment Office (F E O) was considered the employment department and managed the posting and assignment for "common-user" service, especially the MHFS and the general clerical service, this function being handled for other employees by their own departments. The FEO also administered overseas training and scholarship activities and was responsible for the Government Officers Staff Training Centre. Selection for entry into the service was the responsibility of the Public Services Commission, a quasi-judicial agency provided for in the Constitution. Its purpose was to protect the civil service and "service standards" from political interference. Job qualifications and the number of vacancies were prescribed by the F E O. The P S C announced and conducted performance records and brief interviews to determine relative suitability. A ministry was headed by a permanent secretary, who might be a professional officer, but was almost always a member of the MHFS; in a large ministry the secretary was assisted by a deputy secretary and small MHFS staffs handling finance, establishments and services (personnel) and administration.

1. Suffian et al *op. cit.*, pp. 263-88.

(house-keeping). The major activities of MHFS Officers are indicated in the following table.¹

Administrative management, including personnel, finance and house-keeping.	223
Land and district administration and local government.	118
Foreign affairs.	136
Economic administration : planning, commerce and industry, public works, transportation, finance.	80
Social administration : education, health, labour and welfare.	14
Agriculture and rural development	23
Internal security and defence	35
Others	38

Total	667

Criticism. The M C S has been criticised on the ground that it is an "elite". It is true that the M C S is drawn from restricted sources ; and that it behaves in a manner of superiority towards other civil servants. The M C S has been an elite racially, too ; because in the beginning only the British were recruited ; later it was opened to the British and Malays ; and now Malays predominate. But the basis of recruitment has been broadened, with the extension of educational opportunities. In 1956 it was also decided that the M C S should become more specialised. So within the M C S several "professional career patterns", in the fields of economics state, and district government and administrative management have been introduced.

1. Milton J E. man, *op cit.*, pp. 86-8.

Another ground of criticism is that there has been a drop in civil service performance and efficiency since Malaynization. During this change, it is quite probable that some men might have been promoted beyond their capabilities, and some dislocation might have also been caused by the process of replacing top personnel during Malaynization. But one official view is that there has been no lowering of standards since Malaynization. Another view is that, largely because of the the dislocation caused by Malaynization, the level of performance has fallen in technical and perofessional fields, but not in the sphere of administration. One other criticism is that the MCS suffers from corruption. An official inquiry concluded that it existed in some government departments ; and it may also occur in other departments.

State Services. All the eleven States of the former Federation of Malaya have their own state clerical services. A proposal to integrate these separate services, put forward soon after independence, failed, partly because Johore and Kedah feared that, if it came into effect, they might lose some of their best men. Now the Federation may, at the request of a State, second any member of the public service to the service of that State ; and a State may, at the request of the Federation or of another State, second any member of its own public service to the service of the Federation, or as the case may be, of that of other State. Some months before the formaion of Malaysia, the slow pace of Borneanization was deplored by the president of the Sarawak Government Asian Officers Union. According to him in Division I of the Sarawak Civil Service there was only 1 local man out of 30 ; and in Division II approximately 30 out of a 120 posts were held by local man. In the new Sarawak Constitution the Governor was given the power to safeguard the special position of the natives ; at the same time the government also initiated a long-term solution for stepping up native education as a whole selecting particular natives to go for

degree, and shorter courses abroad. The formation of Malaysia introduced a complication. In seeking to replace a high proportion of the expatriates in the civil service, it faced potential competition not only from Chinese inside Sarawak but also from officials who might be appointed to posts in Sarawak from Malaya. In North Borneo, the government had economised in appointing European officers, since fifty to sixty British officers were sufficient, by a system of native administration. After 1963 most departments asked expatriates to stay for from 5 to 10 years. The long-term solution lay in a vast expansion in the number of highly educated natives. After the formation of Malaysia, the federal government assumed some functions previously undertaken by the State governments of Sarawak and Sabah, so some of the State government departments became federal.¹

1. R.S. Milne, *op. cit.*, pp. 153-62.

Party Politics

I. The Alliance Party and the Socialist Front **The Alliance Party**

The UMNO. Actually the Alliance Party was institutionalised in 1953, by the union of the United Malay Nationalist Organisation (UNMO), the Malay Chinese Association (MCA) and the Malay Indian Congress (MIC). It would be useful to know something about their antecedents. In 1926 a group of middle class, mainly English educated Malay lawyers, journalists, religious functionaries and merchants founded the Singapore Malay Union, with the object of promoting the welfare of Malays living in Singapore, politically, socially and educationally. Its branches were formed in other parts after 1937. For example, a political organisation under the patronage of middle class Malays—Malay Association of Panang—was formed in 1938, and similar associations were set up in Selangor, Kelantan, Perak Sarawak and Brunei in the following two years.

Attempts were made to unite all these organisations into one union of Malay Associations, but they failed, because loyalty to the State and its ruler prevailed over any other interest. But when, after the surrender of the Japanese in 1945, the British returned to Malaya and announced their plans for setting up a Malayan Union, the rulers of the various States came under a threat. In the new system, the citizens were to owe their allegiance to the British Crown in place of the Rulers. In March 1946, the Malay associations were amalgamated into one body—the United Malay Nationalist Organisation (UNMO), whose main object was to oppose Malay Union and to fight for the restoration of the rights and privileges of the Malays in a Malay country.

The Malay Chinese Association (MCA). The formation of a federation, whose constitution was biased in favour of the Malays, made it imperative that party politics after the federation would be conducted on racial (or communal) lines. The Malayan Communists, a large majority of whom were Chinese, decided not only to take the lead in anti-federation and anti-Malay movement, but also to launch a terrorist movement with the object of ending the colonial regime. The communist activity in South-East Asia reached its peak in 1948 and 1949. The Malayan Communist Party claimed to be waging a war of national liberation on behalf of all Malays. But on account of its overwhelmingly Chinese membership, the Malays were not attracted by it; they worked gradually and constitutionally for winning independence. The non-Communist Chinese were also put in a very embarrassing situation by the Malay Communist Party. They wanted on the one hand to fight for their rights and on the other to be dissociated from the Communists. Thus the

Malay Chinese Association¹ was formed. It was mainly an organisation of the well-to-do Chinese, who acted as spokesmen for Chinese interests in the Federation.

The MCA, less than a decade after its establishment, was in deep trouble. It was unable to command a broad consensus among Malay Chinese, because (a) many Chinese did not feel morally bound by the compromise that founded the Alliance, and (b) others insisted that even within the terms of the compromise the MCA had done little to protect the legitimate interests of the Chinese. The non-Communists, who espoused non-communal politics, were more significant. Most of the growing educated Chinese middle class took this line. The non-Malay, basically Chinese parties, which advocated the doctrine of non-communal democratic socialism, opposed Malay privileges, but advocated special opportunities for Malays to overcome their educational and economic lag, but not at the expense of other races.²

The JMP and the Party Negara. In 1951, one of the founders of the UMNO (Dato Orm) decided to launch a new party, which was to be genuinely multi-racial. So he formed the *Independence of Malaya Party (IMP)*, and its membership was opened to all races. But this experiment did not succeed. Three years later he again entered into politics and formed a new organisation—the Party-Negara, which was implicitly for Malays only.

1. Being a representative body of an immigrant community the MCA included in its aims the attainment of inter-racial harmony and understanding. Tan Cheng Lock in his inaugural address on 27 February 1949 had said that the MCA had been launched, "with the twin fundamental objectives of bringing about cohesion and unity among the Malayan Chinese of all classes and promoting inter-racial goodwill, harmony and cooperation... it is a matter of supreme significance and an indispensable necessity that a basic purpose of this organization must be the attainment of inter-communal understanding and friendship, particularly between the Malays and the Chinese..." R.K. Vasil, *Ethnic Politics in Malaysia*, p. 79

2. Milton J. Esman, *Administration and Development in Malaysia*, pp. 28-30.

Formation of the Alliance Party (AP) The holding of local government elections in 1952, as an instalment of self-government, gave the UMNO and HCA a chance to form an electoral alliance, according to which each was to support the candidates of the other in selected constituencies. The success of this arrangement led to its institutionalization as the Alliance Party in 1953. In 1955 the Malay Indian Congress¹ also joined the Alliance, which won 51 out of the 52 seats in the general elections for the Legislative Council in 1955. The leader of the Party—Tunku Abdul Rehman—led the movement for independence, which was achieved on 31 August 1957.²

Because of the communal nature of politics in Malaya, all parties have faced a dilemma. If they did not try to appeal to a particular community or communities, they lost support to parties which made this type of appeal. The IMP'S failure was a terrible warning of the fate awaiting an explicitly non-communal party. On the other hand, because of the mixed racial composition of the electorate it has been difficult for any party which appealed to only one community to win a majority in Parliament. The solution to this impasse was reached accidentally, by the Alliance. The formula adopted by the Alliance was that a number of communal parties be joined "at the top" in

1. The Malayan Indian Congress was launched at the beginning of August 1946 at Kuala Lumpur with the objectives: (1) to protect and promote the varied interests of the Indian community; (2) to prevent inter-communal disharmony and misunderstanding during the period leading to independence. It was not able to establish itself as the spokesman of the Indian community as it had to compete with at least two other organizations, the Malayan Indian Association and the Federation of Indian organizations, for the loyalty of Indians. Many Indians in Malaya have been conscious of the fact that they constitute less than ten per cent of the total population in the country and, therefore, in politics organized on strictly communal lines they would exert extremely limited influence. Many of them as a result have been attracted by non-communal political organizations where they have provided a significant part of the leadership and supporters. - *Ibid.*, p. 80.
2. Waddel, *An Introduction to South-East Politics*, pp. 144-45.

an inter-communal alliance of the three communal parties within the Alliance, the UNMO was strongest and the MIC was the weakest, the MCA was the third.

Esman says: Since the identity structure of most Malaysians is communal, it is not surprising that politics, responding to the essential reality, should be organised on that basis. On account of the abortive attempts in the early 1950s to organise political life non-communally, it became evident that successful political mobilization would have to be communally based. The result was the Alliance Party, a coalition of three communal groupings...¹ Pye also writes: 'Malaysia represents another form of nationalist coalition party system. In contrast to Burma, however, the Alliance which has dominated Malaysian politics since independence has been a coalition with no pretences towards logical formulations. The Alliance instead has sought to represent the most basic divisions within Malayan society and to bring them together in a cooperative effort for the national good.'²

The Alliance Party sometimes denied that it had any ideology; it took the line that its ideology, was not capable of being called as "socialism", "communism", or "capitalism", but it rests on "development". Thus welfare measures have a high place in the Alliance programme and some of its welfare measures could be equated with socialism. In the sphere of community development and social services the Alliance programme was formulated on the basis of socialistic ideals. There has also been present in the youth section of the MCA that their organisation or the Alliance ought to have an ideology. The national president of the MCA once said: 'Though we are supposed to be a right-wing government, we are more socialist in practice than many so-called socialist governments.'

1. Milton J. Esman, *op. cit.*, pp. 23-4.

2. Lucian W. Pye, *South-East Asia's Political Systems*, p. 56.

The Alliance has undergone considerable strains and stresses. Each of the two main partners—the UNMO and the MCA—has to compete with parties appealing to its own community and at the same time keep in step with its Alliance partners. This has sometimes resulted in pressures tending to disrupt the component party. The difficulties of the MCA have been more open, because it has been charged for betraying the Chinese on some aspects of the "bargain", such as language, education and Malay rights. Towards the end of 1965 there were marked tensions inside the Alliance, because in the MCA there was discontent on the issue of Chinese language. Its leaders did not want Chinese to be an official language, but they wanted a more general and wider use of the Chinese language by all government departments and statutory bodies. 'There were signs of dissatisfaction with the party's official policy even inside the UMNO. The Secretary-General of the party resigned after the separation of Singapore, indicating that many in the party would have preferred that a tougher line had been taken with Singapore.'

The Socialist Front (SF)

The Labour Party. The Socialist Front was also built on an Alliance-type formula, but the communal aspect was less obvious than in the Alliance. The antecedents of the parties which formed the Front may briefly be stated. The Front came into existence in 1957, when the Labour Party (LP) and the Party Ra'ayat came together. In March 1964 the National Convention Party, recently founded, also joined the Front. It had placed a great emphasis on its non-communal character. It had stuck to its principles and had avoided making any compromises with the aim to please one community or another. This approach of the party was not liked by the Malays, who regarded the party to be an organisation of the non-Malays. Notwithstanding this, LP's

1. R.S. Milne. *Government and Politics in Malaysia*, pp. 88-91.

emphasis on non-communalism and absence of any effort to take into account the feelings of the Malays continued to the time of independence.

The Party Ra'ayat and the National Convention Party. Broadly, it was based on the rural areas and consisted mainly of the Malays, while the LP was for the most part urban and Chinese. The LP was also stronger and better organised than Party Ra'ayat. But the Chinese joined the party in large numbers, particularly in those places where it had no branches. The National Convention Party was also mostly rural and Malay, based mainly in parts of Selangor. The Party Ra'ayat, largely dependent on Malay participation and support demanded that the LP must accept the position of the Malay Rulers and the special position of the Malays as provided in the constitution of Malaya. The LP, which had earlier rejected these conditions, later modified its stand and accepted the conditions. The reason for this change in its approach was the realization by LP leaders that their party had failed to establish any roots among the Malay masses and that it would be even more difficult to do so after the independence was achieved. This had a significant effect on the character of the LP. Both the parties of the Front reached an understanding, in accordance with which Party Ra'ayat concentrated on enlarging the area of its support within the Malay community and the LP concentrated its efforts to gathering greater support among the non-Malays, particularly the Chinese.

The SF Ideology. It was vague in its proposals for social and economic reform. It favoured welfare measures and development; thus far it did not differ from the Alliance. But the SF openly advocated more economic equality in its 1964 election manifesto, 'without making any mention of nationalisation of industry. It attacked colonialism and foreign business firms in Malaya which embodied both the evils of capitalism and colonialism. But all leaders of the SF were not outspoken in their opposition to communism, so it did not lose the image of the party as

communist-infiltrated. Like the Alliance, the SF was also not united on the language question.¹

II. Other Parties

The role of all other parties in the politics of the country has been much less important. Moreover, it is not easy to classify them; some others are non-Malay and some are communal, while others are not. A brief account of these is as follows:

Pan-Malaysian Islamic Party (PMIP). It was founded on the principles of Islam; and it has its greatest support in the north-eastern States of Kalantan and Trengganu, where the population is over 90 percent Malay. The driving force of the party comes from religion. Its principles and programmes may briefly be stated: (i) It stands for a strict interpretation of Islam; and denounces Western importations, like dancing. (ii) It believes that in the eyes of Islam, religion and politics cannot be separated from each other. As a religious party it supports a more vigorous propagation of Islam. (iii) It has attacked the existence of the Chinese middlemen and money lenders and also the UMNO's policy of mixing with rich Chinese in the higher echelons of the Alliance Party. (iv) The party claims that if it came into power it would base its economic policy on the principles of Islam. It has found support in the teachings of Islam for some kind of nationalization of land and electricity. Economically, some of its beliefs may be radical, but socially it is very much conservative.

Three main strands in PMIP policy were indicated by one of its leaders—Dr. Burhanuddin—; they are nationalism, Islamism and socialism. The element of socialism is in nationalism, which is based on the aspiration to build a just society. There are elements of nationalism in socialism, because socialism can be built when it is pioneered by the nationalist spirit towards the path of freedom from the yoke

1. *Ibid.*, p 92.

of colonialism. The elements of nationalism are found in Islam as a basis for the national liberation movement. But in practice nationalism tended to blend PMIP supporters to the nature of communism. Confrontation with Indonesia put a severe strain on the PMIP, because it hoped that eventually Malaya and Indonesia would unite.¹

As the name implies, the PMIP is committed to Pan-Malayism, which indicates a pro-Indonesian policy, including political association with their Indonesian racial brothers. Essentially, it does not accept the legitimacy of Chinese participation in Malaysian life. It also emphasises the cause of the poor and forgotten—Malay farmers and fishermen, who had been neglected by the Alliance government. It accuses the Malay establishment of neglecting the peasants, by failing to attack the root cause of rural poverty. Its leaders attack the middlemen, not because they happen to be Chinese, but because of their exploiting role. 'While concerned with improving the economic and social lot of the poor Malays, this group rejects government's current emphasis on religion and mosque building, avoids specifically communal appeals, and participates in non-communal political parties.'²

People's Progressive Party (PPP). It was formed in January 1953 at Ipoh (Perak) by two lawyers of Ceylon. In the beginning it was known as Perak Progressive Party. The younger of the two brothers had earlier been associated with the Perak Labour Party, so he desired the new party to have socialist orientation. But others responsible for the formation of the party were unwilling to accept socialism as its main creed. However, there was no disagreement with regard to its non-communal character. In its memorandum to the Federal Elections Committee, on 14 October 1953, it emphasized its non-communal orientation and recommended that the elections should be held on a non-communal basis. But very shortly afterwards the party decided to join the Alliance, for the purpose of contesting the coming town

1. Ibid. pp. 93-4.

2. Milton J. Esman, *op. cit.*, pp 26-28.

council elections in Perak. The party justified its action by saying that although the UMNO and the MCA were communal organizations, the decision by their leaders to join hands and establish the Alliance indicated their desire to eradicate communalism and promote non-communalism. This cooperation, largely based on expediency, did not last for long; in February 1955, as a result of differences over the Federal Legislative Council elections that year, the PPP took the decision to leave the Alliance.¹

The party changed its name from Perak to People's after 1955, but in spite of that it did not achieve much success in expanding its support and influence beyond the boundaries of Perak. Thus the party character remained regional; moreover, it was also personal, because its driving force came from the two founder lawyers. Although the party was sometimes described as a left-wing party, its appeal was not mainly economic. In its 1959 election manifesto it said that in due course tin and rubber would be nationalised, with a view to preventing the exploitation of workers and improving their standard of living. The main appeal of the party was to the non-Malays, largely on the issues of language and education. It wanted the Chinese and Tamil to be recognised as official languages, although Malay should remain the national language.

The United Democratic Party (UDP). It was formed in April 1962 by some of the former leaders of MCA, who had left that organisation after a crisis in the Alliance in 1959. It claims to be a non-communal party, although in the 1964 election it got most of its votes from the Chinese. It did not demand complete equality for non-Malays with Malays and it did not want a complete reversal of government's education policy, although it criticised the implementation of Alliance policies in this field. Its strength lay mainly in the personality and reputation of its leader, Dr. Lum Chong Eu, the former president of the MCA.

The PPP and UDP were both non-Malay parties.

¹ RK Vasil, *op cit.*, p 131.

They operated within the framework of some crucial circumstances which determined their effectiveness. The Malays and their leaders always viewed them as nothing more than communal organizations of the non-Malay communities threatening the political paramountcy and special position of the Malays. The Malays, therefore, showed little interest in joining them and support them despite the fact that they were all founded as genuinely non-communal political organizations. 'This made it impossible for these parties to maintain their non-communal character and invariably over the years they were turned into non-Malay, essentially Chinese, communal organizations. And that made them even more unacceptable to the Malays. They have been allowed to exist only as opposition parties, a necessary window dressing for parliamentary democracy and providing a legally-constituted and controlled channel for non-Malay discontent and dissatisfaction; they would not be acceptable to the Malays as alternative governments.'¹

Democratic Action Party (DAP). These two new parties were formed in the context of growing communal disharmony. The parent organisation of the DAP was PAP, which had established its credibility during the period 1963-65. After Singapore had separated from the federation in 1965, one of its top leaders and the only representative of the PAP in the Parliament, C. V. Devan Nair stayed in Malaysia, as he was a Malaysian citizen by birth. Under his leadership, Malaysian-based PAP was reorganised as DAP in March 1966. The formation of DAP was of great significance, as it was far more homogeneous and united than any of the opposition parties formed earlier. It also presented a more pro-non-Malay and clear-cut policy and programme, so it provided leadership and a rallying-point for non-Malays, who had been angry and disillusioned with the MCA and MIC. It exercised great influence on post-1965 politics in the country. It pursued a non-communal approach, hoping to establish itself as the

1. Ibid, pp 117-18.

chief representative of the non-Malay communities. In a declaration made in July 1967, the party committed itself to the ideal of a free, democratic and socialist Malaysia, based on the principles of racial equality and social and economic justice.

The Gerakan Rakyat Malaysia (GRM). It was formed in March 1968. Its founders were two former leaders of the LP and Dr. Lim Chong Eu, the foremost leader of the UDP. Its leadership determined its popular base; it mainly attracted the English-educated moderates of the LP and Chinese supporters of Dr. Lim. The party's leadership made special efforts to get support of trade unions, in order that it could establish itself as a genuinely non-communal political party.¹

Political Parties in Sarawak. Political parties are a very recent growth in Sarawak; in 1961 there were only two—the Sarawak United People's Party (SPUP) and the Party Negara Sarawak (PANAS). SUPP was opposed to Malaysia, preferring that Sarawak should become independent by itself. PANAS, on the other hand, after a brief hesitation, came out in favour of Malaysia. The leadership of the intendedly non-communal SUPP was mainly Chinese. PANAS, although non-communal in principle, contained a high proportion of Malay members and leaders. The two parties were followed rapidly by four others: the Sarawak National Party (SNAP), largely Iban, in 1961; Barisan Ra'ayat Jati Sarawak (BARJASA), largely Malay, in December 1961; the Party Pesaka Anak Sarawak (PESAKA), mainly Iban, in August 1962; and the Sarawak Chinese Association (SCA) in July, 1962. The five pro Malaysian parties formed a Sarawak Alliance in January 1963.

Political Parties in Sabah. Political development in Sabah, was behind in Sarawak there were no formally organised parties even in May 1961. But by Decem. 1962, when the first District Council elections were held, there were five, joined together to form the Sabah Alliance and all in favour of Malaysia. The

1. Ibid, pp 159-61.

five were : The United National Kadazan Organisation (UNKO); the United Sabah National Organisation (USNO); the Nationat Pasok Momogun Party; the Sabah National Party (SANAP); and the Sabah Indian Congress.¹

III. Party Politics and General Election Upto 1964

During this period there had been three general elections in Malaya/Malaysia. In 1955 the elections were for 52 out of the 98 seats in the Legislative Council of Malaya; and in 1959 and 1964 for the 104 seats in the federal Parliament. Although Sabah and Sarawak had joined the federation in the 1963, their seats in the Parliament were not filled by direct election in 1964 as they had been filled indirectly at the time of the formation of Malaysia.

General Elections, 1955. The 25 seats were contested by 129 candidates, of whom 18 were independent and the remainder were distributed among the following parties. Alliance 52, Party Negara 30, Pan-Malayan Islamic Party 11, National Association of Perak 9, Labour Party 4, Perak Malay League 3, and Perak Progressive Party 2. The Alliance won 51 of the 52 seats, securing 81.7 percent of the electoral votes. The remaining 1 seat was captured by the Pan-Malayan Islamic Party.

The General Election of 1959. The parliamentary and state elections held in 1959 were important for two reasons : (1) They were the first elections held after the achievement of independence and the first elections to result in the creation of entirely elected legislatures both at federal and state levels. (2) They were also the first elections to be held under the supervision of the independent Election Commission established under articles 113-150 of the Federation of Malaya. Article 113 (as it then stood) indicated that the Election Commission should conduct elections to the House of Representatives and to the Legislative Assemblies of the States and also that it should delimit the constituencies and

2 R.S. Milne, *op. cit.* pp 99-104.

prepare as well as revise the electoral rolls for such elections. The then article 171 of the Constitution provided for 212 constituencies for the purpose of the first elections to be held to the Legislative Assemblies of the several States. The number of constituencies in each State is a multiple of the number of parliamentary constituencies. The registered electorate in 1959 was approximately double that of 1955. On 18 August 1959, 2,959,211,494 voters cast their votes. Again the Alliance emerged the victor, but with greatly diminished percentage compared to those of 1955. It controlled 74 seats, while the opposition parties won 30 seats in the Parliament. But Alliance's over-all majority dropped from 81.7 percent in 1955 to 51.5 per cent in 1959. Its losses were both mainly in Malay and non-Malay seats. From Kelantan and Trengganu all the opposition members, with the exception of one of Party Negara, belonged to the PMIP.

The General Elections of 1964. Prior to the polling date Indonesian agents engineered a number of incidents designed to influence the outcome of the elections in favour of the anti-Malayan parties. But terrorism produced the opposite effect, because the Alliance once again gained a decisive victory, improving on its 1959 record. They won 123 out of the 159 parliamentary seats and 240 out of the 282 seats. The electoral votes in favour of the Alliance also improved from 51.8 in 1959 to 58.3 percent. — (Yacul Hussain Merican)¹

Confrontation was the most important issue at the general election of 1964; and it helped the Alliance. Opposition parties which seemed to be half-hearted in their support of the government could be accused of being disloyal. On the other hand, if they backed the government's stand, then the government could say that the most patriotic thing to do was to rally behind the Tengku (Tunku) and vote Alliance. The fact that the PAP won only 1 seat (in Kuala Lumpur) may be explained along these lines. The PAP

1. Suffian et al, *The Constitution of Malaysia: Its Development 1957-77*, pp. 211-14.

said it was solidly behind the Tengku and the UMNO on the issue of confrontation. But when the Tengku said that he stood shoulder to shoulder with the MCA, the PAC attacks on the MCA were blunted. In terms of seats the opposition parties lost heavily. The PMIP lost 3 seats in Trengganu, while it retained all the seats except 1 in Kelantan and it also lost 3 seats to Trengganu. PPP strength in Perak was weakened and it lost 2 of its 4 parliamentary seats. The UDP won only 1 seat in Penang, and the Socialist Front retained only 2 of its 8 seats. But, even in the face of the confrontation issue, it won a higher proportion of the votes than in 1959, 16 percent as compared with 13 per cent, while its main rival among the opposition parties the PMIP won only 14 per cent of the vote in 1964 as compared with 21 per cent in 1959.¹

Parliamentary Elections : Seats Won¹
by Political Parties

<i>Parties</i>	<i>Seat Won</i>	
	<i>1959</i>	<i>1964</i>
1. Alliance		
UMNO	52	59
MCA	19	27
MIC	3	3
	74	89
2. Demorcatc Action Party	—	1
3. Gerakan Rakyat Malaysia	—	—

1. R.K. Vasil, *op. cit.*, pp. 172-73.

4. People's Progressive Party	4	2
5. Pan Malayan Islamic Party	13	9
6. Party Ra'ayat	—	—
7. Independents	3	—
8. Socialist Front	8	2
9. United Democratic	—	—
10. Party Negara	1	—
11. Malayan Party	1	—
	-----	-----
Total	104	104
	-----	-----

IV. Party Politics And General Elections After 1964

The 1969 General Elections. The situation in 1969 was serious. An intense controversy had been generated by the PAP, following the 1964 general elections. The issue was the future of the non-Malay communities and their political status. Both in 1956-57 and 1959 the non-Malay communities were generally unsure of themselves; during the uncertain period of the transition to independence they were less unwilling to concede that Malaya belonged to the Malays. But their general mood in 1969 was different; they were less willing to accept the compromises made as the PAP during its short period of participation in country's politics had articulated and united them. They were inclined to take more positive action to protect and promote their interests. The critical issues of the political position of the non-Malays and the role of their cultures, languages and—education were reopened in 1969 in much more intense form.

This had its own impact on the Malay community, whose fear and suspicion of the non-Malays greatly increased.

Militancy was rampant and the extremists in the UMNO were in the ascendancy. Tunku Abdul Rahman, who had kept the country together and had generally succeeded in avoiding serious communal confrontation through his charismatic leadership, had lost his hold on the Malay masses. 'In the situation a showdown between the Malays and the non-Malays was bound to occur at the time of 1969 general elections. Matters were complicated further by the fact that for the first time in the history of the country most of the non-Malay parties in the opposition were able to establish an electoral arrangement among themselves....In February 1969, the three non-Malay parties in the opposition, the DAP, the PPP and the Gerakan, were able to agree to an electoral arrangement. Under this they divided both the parliamentary and State constituencies among themselves on the basis of their organization and an estimate of electoral support in the constituencies. The crucial result was that they did not field candidates against each other thus depriving the Alliance the chance to gain victories, as in the past elections, in multi-party contests where the non-Malay vote was split among the many contenders, for it.'¹

The Government decided that the holding of by-election would cause considerable inconvenience to the electorate as Parliament and State Assemblies would be dissolved by 18 May 1969 and a general election would be held thereafter. To meet this unusual situation article 54 (2) was amended whereby casual vacancies within 6 months of the date on which Parliament would stand dissolved need not be filled. This amendment was made to apply to State Assemblies as well. In addition, the following amendments were also made: (i) *The Election Offences Act, 1954*. The effect of amendments were: (a) The limit of expenses was increased from \$ 10,000 to \$ 20,000; and (b) the penalty for treating, undue influence and bribery was increased from 6 months

1. Ibid. pp. 163-64.

imprisonment and a fine of \$500 to 12 months' imprisonment and fine of not less than \$250 and not more than \$1,000, (ii) *The Elections (Conduct of Elections Amendment-Regulations, 1968)*, made by the Election Commission were approved by the Supreme Head on December 1968. The amendments were made for the purpose of uniformity and bringing into line similar regulations which were applicable to the Borneo States. (iii) *The Election (Postal Voting-Amendment) Regulations, 1968* were also approved at the same time.

Although the Alliance won 66 of the 113 parliamentary seats, it gained only 48.4 percent of the total electoral votes and for the first time in Malaysian history, the Alliance failed to secure 2/3 parliamentary majority. In State elections the Alliance lost control of Penang, Perak and Kelantan, while in Selangor it gained half the seats in the State Assembly, creating a potential deadlock with the combined opposition. The UMNO'S vote fell from 66 percent to 56 in predominantly Malay constituencies while the populist anti-Chinese PMIP increased its vote proportionately. The MCA and the MIC votes in non-Malay constituencies fell from 49 per cent in 1964 to 39 per cent, the winners being the moderate, nominally non-communal non-Malay parties which achieved an effective working alliance in this election. Two thirds of the Alliance's losses were in non-Malay constituencies.

Parliamentary Elections 1969

<i>Parties</i>	<i>Seats contested</i>	<i>votes polled (in %)</i>
1. <i>Alliance</i>		
UMNO	67	33.67
MCA	33	13.50
MIC	3	1.24
	-----	-----
	103	48.41
2. Democratic Action Party	24	13.73
3. Gerakan Rakyat Malaysia	14	8.57
4. People's Progressive Party	6	3.87
5. Pan Malayan Islamic Party	59	23.75
6. Party Ra'ayat	5	1.24
7. Independents	2	0.34
8. Socialist Front	—	—
9. United Democratic Party	—	—
10. Party Negara	—	—
11. Malayan Party	—	—
	-----	-----
Total	213	99.91
	-----	-----

The results appeared to reflect a protest in both communities against the ruling politicians for complacency and for not prosecuting vigorously enough the incompatible interests of their community. No one expected that any group other than the Alliance could or would govern for the next five years. UMNO leaders were shocked at the outcome. They blamed the Chinese: for abandoning the Alliance and

attributed this loss of Malay votes to their moderate stand on racial issues. The MCA, repudiated by its constituents, declined to participate in the new Cabinet, although it would vote with the UMNO in Parliament. To many Malays the results portended a dangerous threat to their political hegemony.

There arose a demand that two recognised leaders of the strongly pro-Malay elements in the UMNO be given Cabinet posts. The extremists maintained that since the Alliance had retained its position as the ruling party, largely on account of the Malay vote, it was proper that the Alliance, the Cabinet and the government reflected a dominant pro-Malay bias. This led to very grave communal riots in May 1969. The country was engulfed in the worst racial rioting, in which thousands of people were killed or injured. The communal riots helped the UMNO extremists' assume ascendancy in the organisation. Under their pressure the Government over-reacted to the crisis. The Malay leadership took advantage of the crisis to reappraise the situation with regard to the fundamental issues: the position of the Malays and their Rulers, the national language and culture, and the position of the non-Malays and the conditions under which they were to be allowed to live in the country and play a political role. On 14 May, the Supreme Head issued a proclamation of emergency. On the following day, under heavy pressure from the extremists in the UMNO, the Prime Minister announced the establishment of a National Operations Council with Tun Razak as Director of Operations.

The Government suspended Parliament and postponed elections in Sabah and Sarawak, which had been scheduled to be held later in the month. Although the Prime Minister and the Cabinet retained their formal status, effective power was transferred to a nine-man National Operations Council (NOC), chaired by Tun Razak and composed of senior Alliance politicians, civil servants and military officers. The heads

of the MCA and MIC were the only non-Malay members. In each state, an Operations Council was also organised consisting of the Chief Minister, the local police director, and military commander. A similar pattern was established in each district with the district officer in charge. Competitive politics were set aside and the NOC declared that 'there can be no question of a return to parliamentary democracy so long as racial harmony does not exist among the communities. So long as communal sensitivities are tender they can, through irresponsible political propaganda be easily exploited to precipitate another, indeed more serious racial clash.'¹

The General Elections of 1974. The general elections to the House of Representatives and the State Legislative Assemblies, except that of Sabah, were held on 24 August 1974 to elect members to the 154 seats of the House of Representatives and 360 seats of the various State Assemblies. According to article 46 of the Federal Constitution, the House of Representatives consists of 154 elected members, 114 of whom are from the States of Malaya, 16 from Sabah, and 24 from Sarawak. The number of elected members in the States of Malaya was increased from 104 to 114 and the number allocated to each State in article 46 was amended vide Constitution (Amendment) (No. 2) Act, 1973.

Polling for the States of Malaya was held on 24 August 1974. In the case of Sabah polling was held for two weeks from 24 August to 7 September, while in the case of Sarawak polling was extended to three weeks from 24 August to 14 September. Candidates from eight political parties contested the 154 parliamentary and 360 Assembly seats except Sabah, but candidates from only four political parties achieved some form of success while the others failed even to secure a seat. The National Front (an enlarged Alliance Party) won

1. Milton J. Esman, *Administration and Development in Malaysia*, pp. 42-3.

135 of the 154 parliamentary seats and also secured control of all the State Legislative Assemblies. 60.7 percent electorate voted for the Front.¹

In the National Front, the dominant partner, UNNO secured 110 seats—37 candidates were returned unopposed and 73 were elected. A feature of the election was the recovery of other components of the National Front—the MCA recovered strongly with 21 seats in Parliament compared with its previous strength 15. Similarly the MIC, which had 3 seats in the previous Parliament, secured 4. The only effective opposition to the National front came from the mainly Chinese Democratic Action Party (DAP). It retained its 9 seats in Parliament. The election marked the probable demise of the Social Justice Party, which secured only 1 seat in Parliament against 5 before. The mainly Malay People's Socialist Party failed to secure any federal or State seats. The National Front tide was so strong that 53 opposition candidates, including 20 from the Social Justice Party and 17 independents lost their deposits.²

In December 1975, Tun Abdul Razak, the leader of the National Front and Prime Minister fell seriously ill. The country faced a leadership crisis, as it was torn by tensions arising from heightened communist terrorism, communal cleavages and jitters among foreign investors. The Malaysians were so apprehensive of being without Tun Abdul Razak's droit and tranquillising leadership that all media blacked out the fact that he had gone to Paris for treatment. The new emergency measures taken by the government to control insurgency increased the tensions between the majority Malays and the Chinese, nearly 40 per cent of the population. The Chinese complained that they were being harassed by the predominantly Malay army and para-military men. Employment and other opportunities for the Chinese

1. Suffian et al., *op cit.*, pp. 216-20.

2. *Keesing's Weekly* 1974.

were declining because of the government's economic and educational policies which gave priority to Malays. In the troubled times the only leader approaching Tun Razak's calibre and expertise was Datuk Hussein Orm.¹

General Elections, July 1978. Election was held in March 1978 for the Legislative Assembly of Kelantan. It was a great success for Malaysia's ruling National Front. Out of the 36 seats, the National Front's tally was 22. Its local ally —Berjasa— and a splinter group of the Islamic Party won 11 seats. This left the PMIP with only 2 against 22 seats it had held in the previous Assembly. Elections were held in July for the House of Representatives and several State Assemblies. Of the 10 State Assemblies in Western Malaysia, the National Front retained control of all. It made a clean sweep in 3 States; it was a remarkable performance in view of the defection of the Pan Islamic Party from the Front. But the Front suffered a decline in its support; it got 55.14 per cent in 1978 as compared with 60.7 per cent in 1974. In terms of seats, the Front secured more than 2/3rds of the total.

The DAP had only 9 seats in the previous Parliament, but it gained 15 in 1978. Most of the DAP'S gains were at the expense of the non-Malay components of the National Front. The MIC suffered a loss of 2; while both Gerakan (another predominantly Chinese party) and the MIC ceded one each. Another seat was taken from Progressive Party of Perak which enjoys Chinese and Indian support. The PMIP'S decline meant that the National Front gained an even more dominant position in Parliament. The PMIP with only 5 seats in Parliament was much worse off than in 1974 when it was part of the Front and had 13 seats. Its leader, Datuk. Asri, who was defeated, said that neither he nor the PMIP was by no means finished, because the party got 17.1 per cent share of the parliamentary vote. The Prime

1. Denzil Peiris, *'After Razak Who ? is Malaysian's Worry*, Times of India, 25 Dec. 1975.

Minister, Datuk Hussain Orm, got 85 per cent of the votes in his constituency.

General Election, March 1982. Dr. Mahathir, the President of the National Front and Prime Minister need not have called the election till October 1983, but he chose to do so early to get the country to endorse the mandate he won from the party. The campaign once again excluded public rallies or demonstrations, because the government ruled that these might undermine security. The government did so under the special powers it has to deal with the two-fold threat from an underground communist party and racial extremists. The opposition Islamic Party known by its Malay acronym as PAS was a member of the National Front in 1974 and had won 14 seats, but when it fought again on its own in 1978, its score went down to 5. It has been vocal in the past about the government's alleged failure to improve the meagre share of 'bumiputras'. The other important opposition party is the multi-racial DAP, which had won 15 of the 16 seats in 1978 from urban constituencies with a Chinese majority. Of the winners 3 were Indians. Taking this into account, the April 22 election for Parliament and 11 State Assemblies, in one sense was a contest between the UMNO and PAS for Malay support. In another sense, it was a test of the new UMNO leadership headed by Dr. Mahathir Mohamad, who had taken over last July when his predecessor had given up the party presidentship on ground of health. On its part the DAP focussed on minority grievances. Another criticism that the DAP made was that the government's pledge to eradicate poverty regardless of race did not prove effective.¹

In the elections for the 159 parliamentary seats and 312 State seats in Peninsular Malaysia, apart from Barisan National (BN) the Alliance the major contestants were the

1. Dilip Mukherjee, 'Ruling Coalition in Malaysia Will Win Poll', *Times of India*, 29 March 1982.

Malay-oriented Partial Islam (PAS) and the Chinese-oriented Democratic Action Party (DAP). NAP appealed mostly to urban Chinese on issues relating to education and the New Economic Policy (NEP) which aims to give by 1990 a stake of 30 per cent in the national economy for bumiputras (Malays and indigenous people). It also contended that democracy did not exist in Malaysia. DAP competed for Chinese votes, with the liberal MCA and Gerakan both of whom were members of the Barisan Nasional (BN).

In its manifesto, DAP said that in order to keep the Government clean, efficient and trustworthy a strong opposition was a necessary requisite in both the Parliament and State assemblies. The ruling coalition must, therefore, be prevented from obtaining a two-third majority which would enable it to 'manage, chop, and change' the Constitution to suit every whim and fancy of the Barisan Nasional. Like DAP for MCA and Gerakan, PAS was the opponent of UMNO for Malay votes. Datuk Asri President of PAS said: 'In an effort to offer a trustworthy, strong and responsible Islamic opposition in Parliament, PAS is determined to win as many seats as possible to uphold the Islamic cause.' The main theme of PAS was the need to protect the position of the Malays and their religion, which it claimed were being jeopardised by the secular development oriented policies of the BN Government. Accusing BN of failing to stop continuing usurpation of Malay rights by non-Malays, it promised to review development projects which had displaced traditional Malay landowners and to return the land compulsorily acquired by the Government to its owners.

In its manifesto, BN pledged to fight corruption and ensure effectiveness and efficiency at all levels and promised social justice for all communities. It was determined to improve the quality of life and expand educational opportunities at all levels, while guaranteeing just opportunities for all Malaysians. It also assumed that it would preserve and consolidate primary education in the non-Malay tongues—Chinese and Tamil.

In the economic sphere BN promised to promote private sector growth and private enterprises. After two weeks of hectic campaigning by the three major contestants, the polls proved that the Barisan Nasional's promise of a "clean, efficient and trustworthy Government" won more people over to its side and an increasing number of the Chinese preferred the moderate Malaysian Chinese Association to represent them rather than DAP which lost 7 key seats, considered to have been its strongholds since 1969. All the 15 Cabinet ministers who contested in the elections held on 22 April 1982 were returned. The BN again won a sweeping majority—132 out of 154 seats. Commenting on the poll outcome Dr. Mahathir said: "We have toppled the chauvinists among them (the opposition) the narrow-minded people the country can ill-afford." DAP'S strength was reduced to six seats from the previous sixteen: PAS retained its five seats. MIC won, for the first time, all the seats it contested—four for Parliament and six for the States mostly against DAP candidates of Indian origin.

V. Party System

The Chief characteristics of the party system may now briefly be discussed as follows:

Legal Position of Political Parties. The Constitution of Malaysia, like most other constitutions, is silent on this subject. There are more than 20 political parties in Malaysia. The formation of a political party is subject to the rules as laid down under the Societies Act, 1966 as amended from time to time. Section 7 (1) of the Act empowers the Registrar of Societies to refuse registration of a political party: (a) which in the opinion of the minister is likely to affect the interest or the security of the Federation or any part thereof, public order or morality; and (b) which is an organisation or group of political nature established or having affiliation or connection outside the Federation. The Malaysian

Communist Party banned during colonial days, has never applied for registration. The People's Action Party, which had representatives in the Parliament before the secession of Singapore in 1965, was not allowed to function under the foregoing provisions.

Multi-Party System. Although Malaysia, like the United Kingdom and India, has adopted the simple majority system, yet it is unlike the former in that it has more than 20 political parties, but is like India in this respect. In the preceding sections the names of various parties and their programmes have already been discussed, so nothing more is needed to amplify this feature, except that the main reasons for multiplicity are: (1) various groups and (2) regional loyalties.

Communal/Racial Character of Parties. This is a very significant feature, arising from the fact that Malaysian society is multi-racial. Besides the three important racial communities—Malays, Chinese and Indians—there are many others inhabiting different parts or regions of the country. "Because of the communal nature of politics in Malay all parties face a dilemma. If they do not try to appeal to a particular community or communities, they will lose support to parties which do make this type of appeal. The quick death of Dato Orm's Independence of Malaya Party (IMP) is a terrible warning of the fate awaiting an explicitly non-communal party. On the other hand, because of the mixed racial composition of the electorate, it would be difficult for a party which appealed to one community to win a majority in Parliament....It would seem that non-communal parties cannot hope to survive, while communal parties might have some difficulty in winning a majority."¹ Malaysian

1. R. S. Milne *op. cit.*, pp 87-88.

political parties are communal, being based on racial differences and not religion as in India.

One Party Dominance. A party system in Malaysia like that in India is characterised by the dominance of one party. The Alliance Party, as a coalition of three parties—UMNO, MCA and MIC—dominated the political scene from 1955 to 1974. Later, the National Front, with UMNO, as its main component came into power. It may, however, be remarked that no single party has ever captured power. Therefore, the character of the ruling party has been coalitional. Keeping in view the success of the Alliance party, another Alliance type coalition—the Socialist Front existed from 1957 to 1965.

Regional Parties. Since Malaysian federation is composed of several states and regions many of the political parties have been regional or have their strongholds in certain regions or States. There are separate political parties in Sarawak and Sabah which have been described in section II. There was formerly Perak Progressive Party, which later became the People's Progressive Party.

Interest Groups. Interest groups in Malaysia are of recent growth and they are not many in number. The most important interest groups are the trade unions, which are not free from the influence of communalism. Urban workers—Chinese and Indian—are organised into trade unions. Indians have a large number of trade unions and union leaders. By 1962 there were about 300 trade unions, which were later reorganised. The biggest union is the National Union of Plantation Workers and the largest grouping of Unions is the Malaysian Trade Union Congress (MTUC). There is also a Congress of Unions of Employees in the public services.

The chambers of commerce are important pressure groups. In addition to various communal chambers of

commerce, since 1962 there has been an inter-communal organisation—the United Chambers of Commerce. But Chinese Chambers of Commerce play an important role in the political process of the country. Though there are no religious pressure groups, yet in the States of Kelantan and Trengganu, many religious teachers have cooperated with the Pan Malaysian Islamic Party (PMIP). Farmers' organisations have not acquired any importance. Interest groups in Sarawak and Sabah are not yet well developed. But the clandestine Communist Organisation, an underground body run by some extremist members of the SUPP, makes use of affiliated groups, such as the Sarawak Farmers' Association and the Sarawak Advanced Youths' Association.¹

29 MAY 1986

1. R.S. Milne *op. cit.*, pp. 110-112.