



# THE MAKING OF THE MALAYAN CONSTITUTION

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## CONTENTS

<i>Acknowledgements</i>	iii
<i>Contents</i>	v
<i>Photographs</i>	vi
Introduction	1
1 The Origins of the Alliance (1948–1952)	9
2 The Transformation of the Alliance (1952–1955)	35
3 The Alliance Memorandum and the Inter-communal Bargain (1955–1956)	65
4 The Reid Commission: A Question of Balance (1956–1957)	95
5 The Tripartite Negotiations (22 February–22 May 1957)	143
6 The Alliance, Nationalism and National Identity: Some Theoretical Perspectives	189
7 The Conscience of a Nation	211
<i>Appendix I: Citizenship Qualification Proposals by Alliance and Reid Commission</i>	219
<i>Appendix II: Biodata of Prominent Personalities</i>	221
<i>Sources and Bibliography</i>	225
<i>Index</i>	233

## INTRODUCTION

MALAYA's post-war history has attracted considerable attention from historians and political scientists in recent years. Most of the studies on the period 1945-57 have focused on the themes of communalism, nationalism, the Emergency and constitutional developments. K.J. Ratnam, R.K. Vasil and Karl von Vorys, for example, have analysed the interaction between communalism and political behaviour.<sup>1</sup> J. Funston has examined the development of Malay politics, while Heng Pek Khoon and R. Ampalavanar have traced the growth of political consciousness among the Chinese and Indians, respectively.<sup>2</sup> J. de V. Allen, A.J. Stockwell, Mohamed Noordin Sopiee and B. Simandjuntak, on the other hand, have examined important post-war political developments such as the 1946 Malayan Union scheme and the formation of the Federation of Malaya in 1948.<sup>3</sup> In addition, the origins and impact of the Emergency have been investigated by Anthony Short, R. Clutterbuck, Richard Stubbs and several others.<sup>4</sup>

A noticeable void in the existing body of literature is the absence of a political history of the making of the 1957 Malayan Independence Constitution. There is to date no single historical work which traces the origins and formulation of the 1957 Constitution. R.H. Hickling observed 40 years ago that the modern constitutional history of Malaya had yet to be

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- 1 K.J. Ratnam (1965), *Communalism and the Political Process in Malaya*, Kuala Lumpur: University of Malaya Press; R.K. Vasil (1971), *Politics in a Plural Society*, Kuala Lumpur: Oxford University Press; Karl von Vorys (1975), *Democracy Without Consensus*, Princeton: Princeton University Press.
  - 2 J. Funston (1980), *Malay Politics in Malaysia*, Kuala Lumpur: Heinemann; Heng Pek Khoon (1988), *Chinese Politics in Malaysia*, Singapore: Oxford University Press; R. Ampalavanar (1981), *The Indian Minority and Political Change in Malaya, 1945-1957*, Kuala Lumpur: Oxford University Press.
  - 3 James de Vere Allen (1967), *The Malayan Union*, New Haven: Yale University Press; A.J. Stockwell (1979), *British Policy and Malay Politics during the Malayan Union Experiment, 1942-1948*, Kuala Lumpur: Malaysian Branch of the Royal Asiatic Society; Mohamed Noordin Sopiee (1974), *From Malayan Union to Singapore Separation*, Kuala Lumpur: University of Malaya Press; B. Simandjuntak (1969), *Malayan Federalism, 1945-1963*, Kuala Lumpur: Oxford University Press.
  - 4 Anthony Short (1975), *The Communist Insurrection in Malaya, 1948-1960*, London: Frederick Muller; R. Clutterbuck (1973), *Riot and Revolution in Singapore and Malaya*, London: Faber and Faber; Richard Stubbs (1989), *Hearts and Minds in Guerrilla Warfare*, Singapore: Oxford University Press.

written.<sup>5</sup> That passing remark holds true even today. More recently, the Malaysian Prime Minister, Datuk Seri Dr Mahathir Mohamad, reiterated, while tabling a constitutional amendment Bill in Parliament, that the nation was founded on a written constitution, a "social contract", which regulates the functioning of the political system.<sup>6</sup> It was a reference to the Independence Constitution and the sanctity of the document to the political life of the nation. Further, the frequent reference to the 1957 Constitution by political leaders in recent years to justify and legitimise their policies and actions underlines the centrality of the document to the social, political and economic life of modern Malaysia. This study is intended to help fill the gap in our knowledge and understanding of the evolution of the Independence Constitution, its underlying principles and the intentions of its framers.

The studies which have examined the 1957 Constitution to a limited extent can be grouped into two main categories. The first, adopting a historical/political approach, include G.P. Means, K.J. Ratnam, Karl von Vorys and Heng Pek Khoo.<sup>7</sup> The second, adopting a legalistic approach, include L.A. Sheridan, Tun Mohamed Suffian and R.H. Hickling.<sup>8</sup> The studies in the second category are valuable in their fields, but provide little insight into the formulation of the 1957 Constitution. What concerns us here is how events, personalities, ideals and political controversies shaped the framing of the Constitution. As K.C. Wheare has noted, constitutions tend to reflect the dominant beliefs and interests, or compromises between conflicting beliefs and interests, which are characteristic of the society of that time.<sup>9</sup> "A Constitution," he wrote, "is indeed the resultant of a parallel-

5 R.H. Hickling (1960), *An Introduction to the Federal Constitution*, Kuala Lumpur: Government Printer, p. 1. Hickling was a former member of the Attorney-General's chambers in Kuala Lumpur and a lecturer in law at the University of Malaya.

6 *Malaysian Digest*, March 1993, p. 6. Dr Mahathir was tabling the Constitution (Amendment) Bill 1993 which provided for the setting up of a special court to hear criminal charges brought against the Malay Rulers.

7 G.P. Means (1976), *Malaysian Politics*, London: Hodder and Stoughton; Ratnam (1965), op. cit.; von Vorys (1975), op. cit.; Heng Pek Khoo (1988), op. cit.

8 L.A. Sheridan (1961), *The Federation of Malaya Constitution*, Singapore: University of Malaya Law Review; Mohamed Suffian Hashim (1972), *An Introduction to the Constitution of Malaysia*, Kuala Lumpur: Government Printer; Hickling (1960), op. cit. See also L.A. Sheridan and Harry E. Groves (1979), *The Constitution of Malaysia*, Singapore: Malayan Law Journal; F.A. Trindade and H.P. Lee (eds) (1986), *The Constitution of Malaysia: Further Perspectives and Development*, Singapore: Oxford University Press; and R.H. Hickling (1991), *Essays in Malaysian Law*, Petaling Jaya: Pelanduk.

9 K.C. Wheare (1951), *Modern Constitutions*, London: Oxford University Press, p. 98.

ogram of forces—political, economic and social, which operate at the time of its adoption.” Consequently, he says, to understand the significance of a constitution, we must look beyond the formal legal phrases, to discover the predominant forces in the framing and adopting of a Constitution. It is in this spirit of enquiry that we examine the origins and evolution of the 1957 Malayan Constitution.

Those studies which have adopted a historical/political approach have been limited in their scope of analysis because of the previous inaccessibility of the constitutional documents as a result of the 30-year embargo placed on these records.<sup>10</sup> The main sources of information for these works hence have been published documents such as the Reid Commission's Report, legislative debates and newspaper reports. This limitation has necessarily affected their discussion of the historical basis for the constitutional provisions as the published documents form merely the tip of the iceberg.

Means, for example, has examined important aspects of the Constitution based on published documents such as the official report of the Reid Commission, memoranda from organisations and individuals, and newspaper reports. However, his study has not adequately examined the role of the Alliance or the various stages of the constitution-making process.<sup>11</sup> While the influence of the Alliance in the constitutional deliberations is acknowledged, the Alliance intra-party constitutional negotiations and its representations to the Reid Commission, which had an important influence on the shape of the new constitution, have not been sufficiently explored. Further, there is a notable absence of an examination and discussion of the constitutional debates within the Commission, in the Working Party which reviewed the draft constitution, and at the London Conference in May 1957. Similarly, Ratnam, von Vorys and Heng Pek Khoo, while providing valuable discussion of important aspects of the Constitution, have not been

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Whereas was formerly Gladstone Professor of Government and Public Administration at Oxford University.

10 Among the main primary sources for the constitutional debates and discussions are the CO889, CO941, CO1030 series deposited at the Public Records Office (PRO) in Kew, England, and the Sir Ivor Jennings Papers at the Institute of Commonwealth Studies in London. Other useful sources are the DO35, CO1022, CO537 series at the PRO; the Alliance, UMNO and MCA documents as well as the private papers of Alliance politicians (such as the Tan Cheng Lock and Tan Siew Sin Papers) at the Arkib Negara in Kuala Lumpur, Malaysia; the collection of Alliance Party papers at the Malayan Chinese Association (MCA) headquarters in Kuala Lumpur; and the Tan Cheng Lock Papers at the Institute of Southeast Asian Studies in Singapore.

11 Means (1976), *op. cit.*, pp. 170–189.