



Tunku Abdul Rahman signs the Merdeka agreement in London on Feb 8, 1956. Next to him is Alan Lennox-Boyd, Secretary of State for the Colonies.

The Malayan Independence Constitution

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THE Federal Constitution of Malaysia was first known as the Malayan Independence Constitution - aptly named for a nation that had just gained independence from colonial rule.

The Reid Commission, comprising five constitutional experts from Commonwealth nations, was tasked with framing this important covenant.

As Joseph Fernando observed in *The Making of the Malayan Constitution*, "Constitutions tend to reflect the ideas, values and beliefs of the framers and of a society at a given time."

At the time the Constitution was drafted, Malaya was already a multi-ethnic and multi-religious society, and each community was concerned about its rights and place in the nation.

The Malays wanted to preserve their special position on the land while the other communities wanted citizenship and the right to practise their culture and prosper on the land as well.

The commission recognised that they had to take these into consideration as they worked on the constitution.

"They did not attempt to introduce any radical or revolutionary changes, focusing instead on achieving a compromise between the conflicting and sometimes extreme demands of Malaya's plural society," Fernando wrote.

"The sum of their efforts was a conservative and democratically inclined constitution which retained a large measure of continuity with the past while anticipating problems of the future."

The task at hand

The commission held its first full meeting on June 30, 1956. During the ensuing months, it held private hearings with different organisations and political parties in Malaya.

It collected 131 memoranda and held more than 100 hearings with represen-

tatives from across Malayan society: political parties, communal organisations, chambers of commerce, unions, business organisations and individuals.

After collecting information, the commission went to Rome, Italy, in November 1956 to draft the Constitution. The final draft - the fifth version agreed by commission members - was presented to the British government in February, 1957.

"Throughout the commission's work in Malaya and Rome, they made a conscious and visible effort to distance themselves from the Colonial Office," Fernando wrote. "The commission's desire to undertake the publishing of its report on its own in Rome, and to transmit copies of the report simultaneously to the British government and the rulers was intended to stress their independent status."

Issues and challenges

The commission's terms of reference included to:

» Provide for a strong central or federal government while at the same time ensure a measure of autonomy for the states; and

» Provide for common nationality, safeguarding the Malays' special position and the other communities' legitimate interests.

For the first task, the commission formulated a system to distribute legislative power and financial resources, which was suitable to the political and economic conditions.

This system would have a strong central government, which had the power to legislate, determine policies and handle taxation.

Meanwhile, the states were given powers in certain areas. They also had a measure of financial autonomy and were guaranteed steady income through grants-in-aid.

The second task was probably tougher,

requiring more care and discernment. The commission adopted most of the proposals in the memorandum submitted by the Alliance, which comprised Umno, MCA and MIC.

The commission tried to strike a balance between safeguarding the special position of the Malays and the legitimate interests of the other communities.

"Since the first obligation threatened the other obligation, the commission attempted to provide checks and balances in the constitution against the provision becoming a permanent disability to the non-Malays.

"Hence the inclusion of an elaborate bill of rights (Articles 3-13) to guarantee the basic rights of the individual," Fernando wrote.

"In doing so, the commission intended to provide for the growth of a modern democratic polity based firmly on principles of modern constitutionalism and democratic traditions."

The commission borrowed heavily from the provisions of fundamental rights in the Indian constitution and adopted the style of phrasing used in the American Bill of Rights.

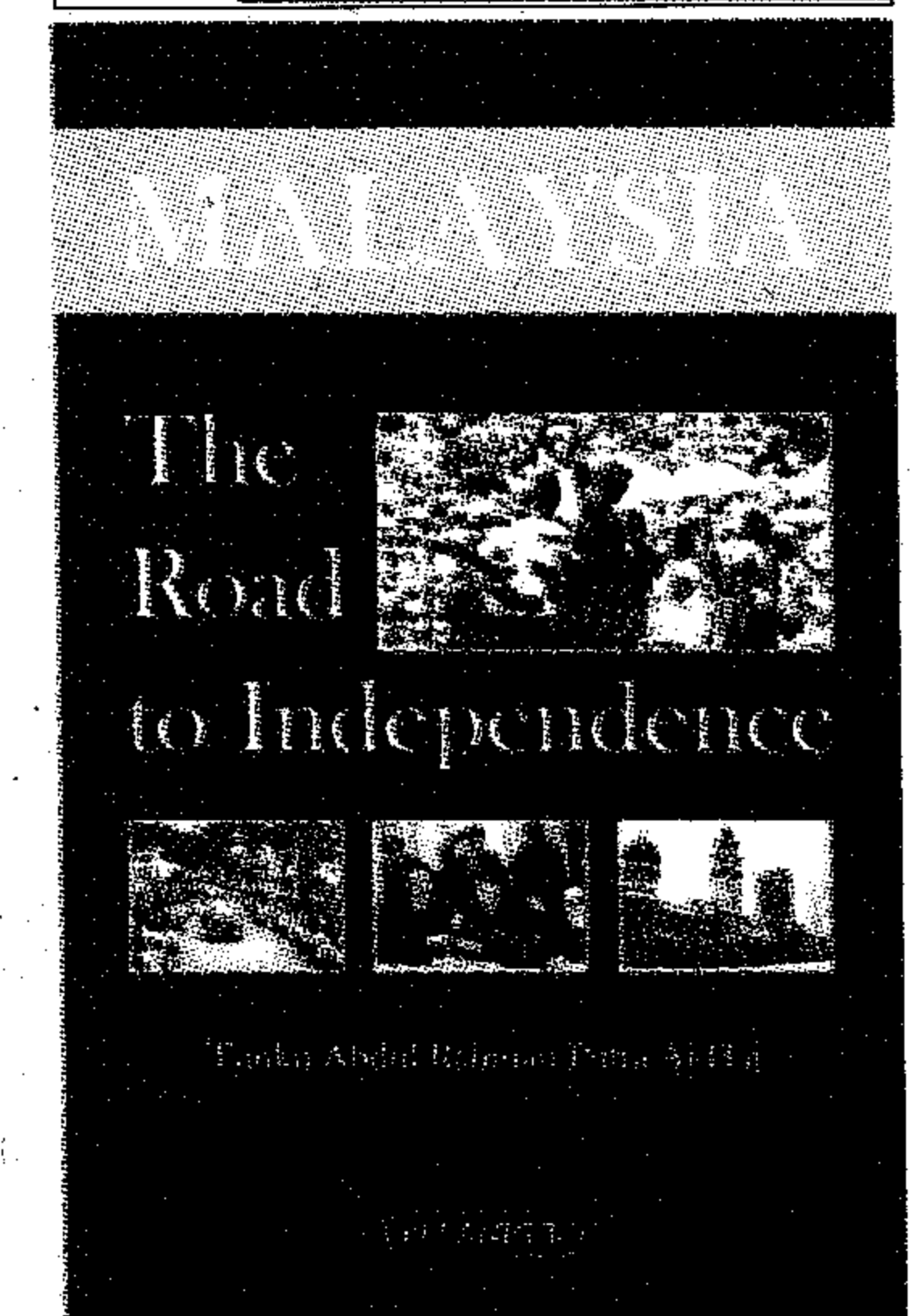
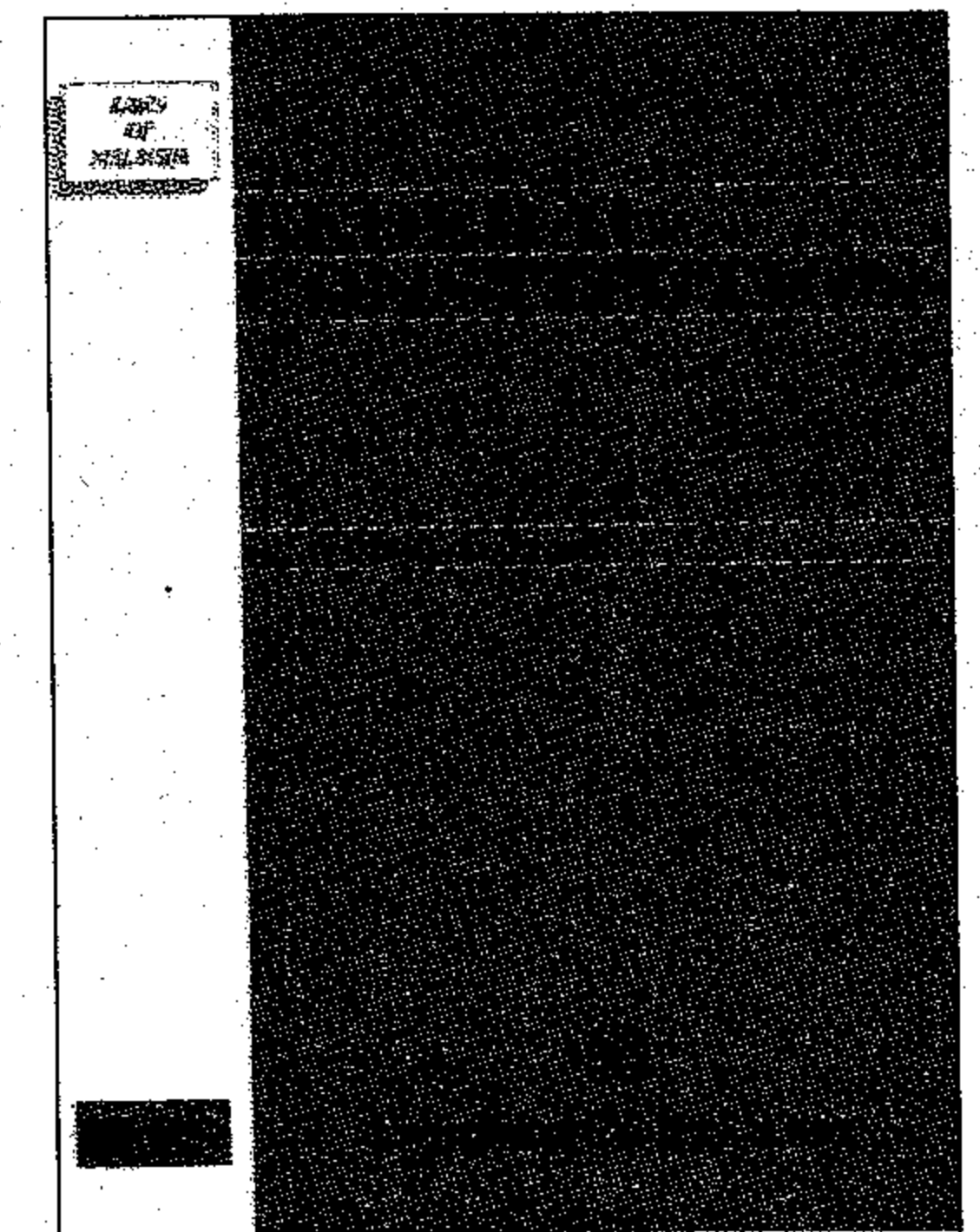
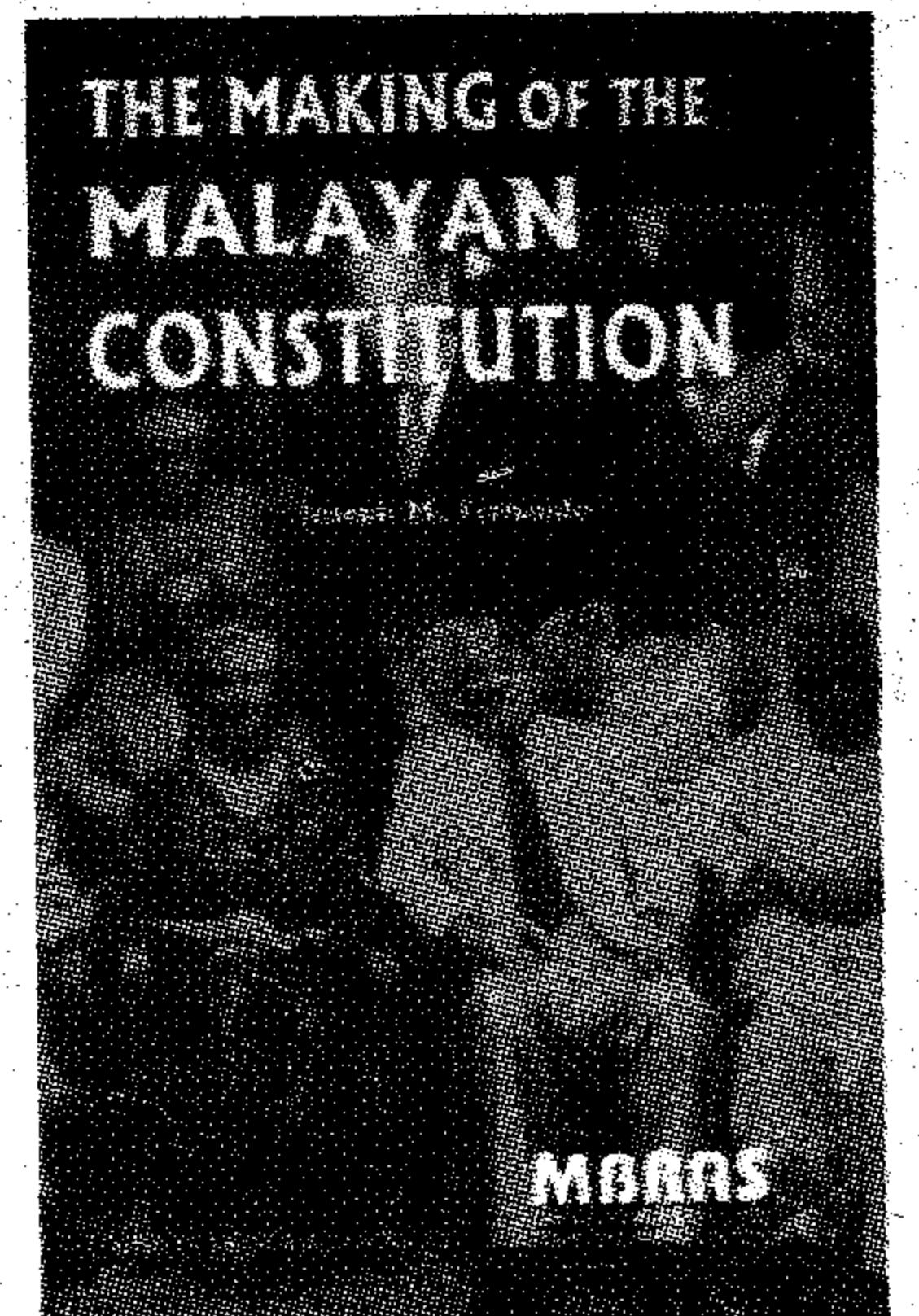
The commission also recognised that there was a constitutional precedent for the Malay special position in the 1948 Federation of Malaya Agreement, and agreed that the provisions should continue for some time to assist the Malays, socially and economically.

It framed the provisions with in-built safeguards to ensure non-Malays would not be permanently disabled - adopting the earlier Alliance suggestion that the privileges be reviewed 15 years after independence.

Although the Alliance had proposed that Islam be made the official religion, the commission turned it down, citing the rulers' request to retain religion as a state matter. The commission was also concerned that there was a contradiction between the Alliance declaration, in its memorandum, that Malaya would be a secular state, and a provision for Islam

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to be the federation's official religion.

However, these changed following protests from some Malays. When the Working Party - comprising the British administrators, the Alliance and the rulers - reviewed the draft constitution, Islam was made the federation's religion, the 15-year time frame was dropped, and it was agreed instead that the special position provision be reviewed from time to time.

The initial provision for multi-lingualism in the legislature was also dropped but provisions were put in place to safeguard the use and teaching of the Chinese and Tamil languages.

Citizenship was granted to those born in the federation from Merdeka Day. Those who were born before that and foreign nationals could obtain citizenship through registration or naturalisation by taking an Oath of Allegiance. Those with dual citizenship would have to choose which nation they wanted to pledge allegiance to.

The final contract that came into force on Aug 31, 1957 was the result of much research, negotiation and accommodation, all in the hopes of arriving at a common ground that would work for all in the long term.

Sources: *The Making of the Malayan Constitution* by Joseph Fernando, *Malaysia-The Road to Independence* by Tunku Abdul Rahman, *The Constitution of Malaysia - Its Development: 1957-1977* edited by Tun Mohamed Suffian, H.P. Lee and F.A. Trindade.